THE

CODE OF ALABAMA.

PREPARED BY

JOHN J. ORMOND,
ARTHUR P. BAGBY, GEORGE GOLDTHWAITE.

WITH HEAD NOTES AND INDEX BY

HENRY C. SEMPLE.

PUBLISHED IN PURSUANCE OF AN ACT OF THE GENERAL ASSEMBLY,

APPROVED FEBRUARY 5, 1852.

MONTGOMERY:
PRINTED BY BRITTAN AND DE WOLF, STATE PRINTERS.
1852.

Entered according to the act of Congress, in the clerk's office of the District Court of the United States, for the Middle District of Alabama.
JUNE 8, 1852.

By an act of the Legislature of the 5th February, 1850, John J. Ormond, George Goldthwaite and John Erwin were appointed commissioners to prepare a Code of the Statutes of the State; by another act of the 9th February, 1850, the sphere of their duties was extended to the preparation of a new code of statute law. (See pamphlet acts 1849-'50.) John Erwin resigned the office and Arthur P. Bagby was appointed by the Governor to fill the vacancy.

The commissioners reported the Code which they had prepared to the General Assembly at its session of 1851-'52, and a joint committee of the two houses recommended its adoption. It was adopted by the act February 5th, 1852.

MONTGOMERY, June, 1852.

TABLE OF CONTENTS.

ARTICLES OF CONFEDERATION 1
DECLARATION OF INDEPENDENCE 9
CONSTITUTION OF THE UNITED STATES 12
ACT OF CONGRESS FOR THE ADMISSION OF ALABAMA INTO THE UNION 25
CONSTITUTION OF THE STATE OF ALABAMA 29
ACTS OF CONGRESS FOR THE AUTHENTICATION OF RECORDS 50
ACTS AUTHORIZING THE STATE TO SELL THE SCHOOL LANDS 51
ACT OF CONGRESS OF JULY 4, 1836, IN RELATION TO THE FIVE PER CENT. FUND 51
ACT OF CONGRESS FOR SETTLEMENT OF THE CLAIMS OF THE STATE, 16TH AUGUST, 1842 52
ACT OF CONGRESS AUTHORIZING APPLICATION OF CERTAIN LANDS TO VALUELESS 16TH SECTIONS 53
ACT OF CONGRESS AUTHORIZING TAXATION OF LANDS WHEN SOLD BY THE UNITED STATES 54

PART FIRST.

General Provisions applicable to the whole Code; of the State organization, and its commercial, sanitary, and police regulations.

Title 1.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAP. 1.—General provisions applicable to the whole code 57

Title 2.

THE POLITICAL ORGANIZATION OF THE STATE.

CHAP. 1.—Of the boundaries, sovereignty, and jurisdiction of the State 59

ARTICLE I. The boundaries of the state 59
" II. Its sovereignty and jurisdiction 60

CHAP. 2.—Political divisions of the state 62

ARTICLE I. Counties 62
" II. Senatorial districts 63
" III. Congressional districts 64

Title 3.

THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS.

CHAP. 1.—The legislative department 65

ARTICLE I. The general assembly 65
" II. Subordinate officers of the general assembly 67

CHAP. 2.—The executive department 68

ARTICLE I. The governor 68
" II. The secretary of state 69
" III. The comptroller 70
" IV. The state treasurer 71
" V. Attorney general 72

Title 4.

THE PUBLIC PRINTING; DISTRIBUTION OF THE ACTS AND JOURNALS; LAWS OF THE UNITED STATES, AND OTHER PUBLIC DOCUMENTS.

CHAP. 1.—The public printing 73

CHAP. 2.—Distribution of the laws and journals; laws of the United States, and other public documents 76

ARTICLE I. Distribution of the laws and journals of this state 76
" II. Distribution of the laws of the United States, and other public documents 77

Title 5.

OFFICES AND OFFICERS.

CHAP. 1.—Offices and officers 78

ARTICLE I. Persons ineligible to office, vacating office, residence and commissions. 78
" II. Oaths of office 79
" III. Official bonds 81
" IV. Requiring additional sureties 83
" V. The discharge of sureties 84
" VI. To compel the delivery of books, papers, property, and money to their successors 86
" VII. Vacating office, death, resignation, removal; salaries, how payable. 87

Title 6.

ELECTORS, AND ELECTIONS BY THE PEOPLE.

CHAP. 1.—Electors 89

CHAP. 2.—General and special elections 90

ARTICLE I. Of general and special elections, for what officers and in what cases; when and where held 90

ARTICLE II. Election precincts 92
" III. Special elections, other than for justices and constables, how ordered and conducted 93

CHAP. 3.—Of general elections, other than for justices and constables 94

ARTICLE 1. The appointment, and notice to inspectors and returning officers; notice of the election; attendance of inspectors and returning officers; appointment of clerks, and oaths 94
" II. Of opening and closing the polls; voting and challenges 96
" III. Of counting out and estimating the vote; giving the casting vote; preserving ballots and poll lists, and making returns to the returning officers of the county 98
" IV. Certificates of election; returns by returning officers of counties in certain cases, and proceedings in relation to certain offices; casting vote in certain elections; returns of congressional and senatorial districts, and allowances for such returns 100
" V. Of general and special elections for justices and constables 104

CHAP. 4.—Of contesting elections 107

ARTICLE I. What elections may be contested; by whom; on what grounds; and general provisions in relation to 107
" II. Of contesting elections of members of the general assembly 109
" III. Of contesting elections of any office filled by the vote of a single county, except members of the general assembly and judges of probate, and of justices and constables 111
" IV. Of contesting the elections of judges of probate 114
" V. Of contesting the election of circuit judge 115
" VI. Appeals, and fees to officers 116

CHAP. 5.—Electors of president and vice president 117

CHAP. 6.—Elections in new counties, until entitled to a separate representation, for congress and members of the general assembly 118

CHAP. 7.—Elections on amendments to the constitution 119

CHAP. 8.—Penalties for violations of the provisions of this title. 120

Title 7.

THE FINANCIAL DEPARTMENT.

CHAP. 1.—Of the duties of comptroller and state treasurer; the fiscal year; the publication of receipts and expenditures 122

ARTICLE I. The duties of the comptroller in relation to the state finances 122
" II. The duties of the treasurer in relation to the state finances 125
" III. The fiscal year, and publication of receipts and expenditures 126

CHAP. 2.—Of certain funds of the state and their administration. 126

ARTICLE 1. The school fund 126
" II. The university fund 128
" III. Bonds and other securities belonging to the state, where deposited and payments to whom made and how 128

CHAP. 3.—Of taxation 129

ARTICLE I. System of taxation, and persons and property exempt from 129

ARTICLE II. Rates and rules of assessment as to certain property 130
" III. Taxes and licenses to be assessed and collected by the judge of probate 133
" IV. Taxes on suits to be collected by the clerk of the supreme court 136
" V. Taxes to be collected by certain other officers 137
" VI. Other rules to be observed in the assessment 137
" VII. Corporations 138
" VIII. Of the appointment of tax assessor 140
" IX. Of the duties of assessor, and other officers and persons in relation to the assessment 140
" X. The tax collector, his bond, and term of office 145
" XI. The duties of the tax collector 146
" XII. Delinquent taxes, sales of property therefor, and redemption 147
" XIII. Tax on steamboats, &c., how collected 151
" XIV. Payment of taxes and licenses 152
" XV. Miscellaneous provisions 153
" XVI. Compensaton to assessors and other officers 154

Title 8.

OF THE PUBLIC PROPERTY OF THE STATE.

CHAP. 1.—School lands 155

ARTICLE I. School lands, school trustees, and surveys 155
" II. Lease of school lands 157
" III. Sale of school lands 158

CHAP. 2.—University lands and site 160

CHAP. 3.—Salt springs 161

CHAP. 4.—The public arms 161

CHAP. 5.—Other public property 162

Title 9.

OF THE JUDICIAL ORGANIZATION OF THE STATE.

CHAP. 1.—The judicial power, in whom vested, and general provisions 162

CHAP. 2.—The supreme court and its officers 164

ARTICLE I. The supreme court and its judges 164
" II. The marshal 166
" III. The clerk 166
" IV. The reporter 168

CHAP. 3.—Chancery divisions, districts, chancellors, and courts of chancery, register, and other officers 169

ARTICLE I. Chancery divisions and districts 169
" II. Chancellors and courts of chancery 170
" III. Registers and other officers 174

CHAP. 4.—Judicial circuits, circuit courts, judges and clerks 176

ARTICLE I. Judicial circuits 176
" II. The circuit court, its judges, and certain officers 176
" III. Clerks 181

CHAP. 5.—Courts of probate 184

CHAP. 6.—The sheriff..... 188

CHAP. 7.—The court of county commissioners..... 190

CHAP. 8.—Justices and constables..... 191

ARTICLE I. Justices..... 191
" II. Constables..... 193

CHAP. 9.—Solicitors..... 194

CHAP. 10.—Attorneys..... 195

Title 10.

COUNTY ORGANIZATION.

CHAP. 1.—Incorporation of counties, deeds, contracts, and agreements for the benefit of. County property and county claims..... 199

CHAP. 2.—County revenue..... 201

ARTICLE. I. How raised and collected..... 201
" II. County treasurer..... 203
" III. The coroner..... 206
" IV. County surveyor..... 207

Title 11.

EDUCATION.

CHAP. 1.—Township schools..... 208

CHAP. 2.—University of Alabama..... 211

Title 12.

REGULATIONS OF TRADE AND COMMERCE.

CHAP.—1. Inspection laws..... 213

CHAP. 2.—Notaries public..... 214

CHAP. 3.—Ships and seamen, engineers and steam boats..... 215

ARTICLE I. Ships and seamen..... 215
" II. Engineers and steam boats..... 217

CHAP. 4.—Regulations of the port and harbor of Mobile..... 220

CHAP. 5.—Cotton gins and cotton..... 226

CHAP. 6.—Change bills, banking privileges, banking associations and state stock..... 227

ARTICLE I. Change bills..... 227
" II. Banking privileges..... 227
" III. State stock..... 228

CHAP. 7.—Weights and measures..... 229

Title 13.

POLICE AND SANITARY REGULATIONS.

CHAP. 1. Hospitals, disease, infection, and quarantine..... 230

CHAP. 2.—Physicians, surgeons and dentists..... 233

CHAP. 3.—Patrols..... 234

CHAP. 4.—Slaves and free negroes..... 237

ARTICLE I. Slaves..... 237
" II. Free negroes..... 241
" III. Free colored mariners..... 242

CHAP. 5.—Retailers..... 244

CHAP. 6.—Estrays and animals running at large..... 245

ARTICLE I. Estrays..... 245
" II. Stallions and jackasses running at large..... 248

CHAP. 7.—Marks and brands..... 249

CHAP. 8.—Enclosures, trespassing, animals and partition fences. 250

CHAP. 9.—Of mills and millers..... 251

CHAP. 10.—Fire hunting..... 252

CHAP. 11.—Unwholesome provisions..... 252

CHAP. 12.—Storage of gunpowder..... 253

CHAP. 13.—Oysters..... 253

CHAP. 14.—Roads, bridges, ferries and water courses..... 255

ARTICLE I. Public roads..... 256
" II. Private roads..... 263
" III. Toll bridges, causeways and ferries..... 264
" IV. Turnpike, plank and macadamised roads, and bridges, and water courses, on which toll is charged by any special law..... 266
" V. Water courses..... 267

CHAP. 15.—Provision for the poor..... 267

Title 14.

OF MUNICIPAL AND RELIGIOUS CORPORATIONS, AND FOR THE PURPOSES OF EDUCATION.

CHAP. 1.—The incorporation of towns..... 269

CHAP. 2.—Of religious societies, and for the purposes of education..... 274

PART SECOND.

Of the acquisition, possession, enjoyment and disposition of property, and other private rights.

Title 1.

CONVEYANCES AND DOWER.

CHAP. 1.—Of conveyances 276

ARTICLE I. Who may make conveyances for the alienation of lands 276
" II. Registration 277
" III. Probate and acknowledgment of 278
" IV. Protection to creditors and purchasers against dormant conveyances 280
" V. Construction of, and certain general provisions 283
" VI. Entering satisfaction of mortgages 287
" VII. Imperfect titles 288
" VIII. Grants by this State, and the United States 289

CHAP. 2.—Dower 289

ARTICLE I. In what dower consists 289
" II. How assigned 290

Title 2.

PRIVATE CORPORATIONS.

CHAP. 1.—Free banking incorporations 294

CHAP. 2.—For the construction of macadamized, graded, turnpike, plank, and rail roads 302

CHAP. 3.—For mining and manufacturing 308

CHAP. 4.—General provisions 309

Title 3

LIMITED PARTNERSHIPS; INTEREST; NEGOTIABLE INSTRUMENTS, AND VOID CONTRACTS.

CHAP. 1.—Limited partnerships 311

CHAP. 2.—Interest 315

CHAP. 3.—Negotiable instruments 316

CHAP. 4.—Void contracts 320

ARTICLE I. The prevention of frauds and perjuries 320
" II. In consideration of not bidding for public lands 321
" III. Gambling and wagering contracts 322
" IV. Contracts made on Sunday 323

Title 4.

ESTATES OF DECEDENTS.

CHAP 1.—Descents and distributions 324

CHAP. 2.—Wills 327

ARTICLE I. General provisions 327
" II. The execution and probate of wills 330
" III. Contesting the validity of wills 334

CHAP. 3.—The grant of letters testamentary, or of administration 336

CHAP. 4.—The removal of, and requiring additional bonds of executors and administrators, and proceedings on the discovery of a will, after the grant of letters .. 342

CHAP. 5.—Collecting the property of the deceased, inventory, appraisement, and return thereof 345

CHAP. 6.—Of the powers and duties of executors and administrators 347

ARTICLE I. The settlement and payment of debts and legacies, proceedings to enforce distribution and payment before final settlement 347
" 2. Of rendering accounts and making settlement 355

CHAP. 7.—Proceedings as to insolvent estates 358

CHAP. 8.—Sale of lands for distribution 363

CHAP. 9.—Compelling executors and administrators whose authority has ceased, to make settlement 365

CHAP. 10.—Of the presentation of claims 366

CHAP. 11.—Of appeals 367

CHAP. 12.—Miscellaneous provisions 369

CHAP. 13.—General provisions as to rights and liabilities of executors and administrators 371

Title 5

THE DOMESTIC RELATIONS.

CHAP. 1.—Husband and wife 375

ARTICLE I. Marriage 375
" II. Divorce and alimony 378
" III. Separate estate of the wife 380
" IV. Provisions for the protection of married women and their families .. 382
" V. Voluntary separation of man and wife 384

CHAP. 2.—Legitimating and adopting children 384

CHAP. 3.—Guardian and wards 385

CHAP. 4,—Master and slave 390

Title 6.

PROVISIONS RELATING TO ESCHEATS, SALVAGE, WATER-WORKS AND DAMS, AND THE REDEMPTION OF REAL ESTATE.

CHAP. 1.—Escheats 393

CHAP. 2.—Salvage 395

CHAP. 3.—The erection of water works and dams 397

CHAP. 4.—The redemption of real estate 400

PART THIRD.

Proceedings in civil cases.

Title 1.

PROCEEDINGS IN CIVIL ACTIONS IN COURTS OF COMMON LAW.

CHAP. 1.—Of the parties 403

CHAP. 2.—Of the mode of commencing suit 408

CHAP. 3.—Of the execution and return of the summons 409

CHAP. 4.—Of arrest and bail 410

CHAP. 5.—For the recovery of personal property in specie 412

CHAP. 6.—Of real actions 414

CHAP. 7.—Of defamation 417

CHAP. 8.—Of pleadings 418

ARTICLE I. General rules 418
" II. Of the complaint 419
" III. Of the plea 419
" IV. Of the replication and subsequent pleadings 421
" V. Of demurrers 421

CHAP. 9.—Of the trial and its incidents 422

CHAP. 10.—Of evidence 423

ARTICLE I. Of general rules 423
" II. Of the mode of procuring testimony by subpœna 427
" III. Of the procuring testimony by deposition 429
" IV. Examination of the parties by interrogatories 431
" V. Proceedings to perpetuate testimony 432
" VI. Demurrer to evidence 434

CHAP. 11.—Bills of exception 436

CHAP. 12.—Of the removal of the trial 436

CHAP. 13.—Proceedings, where suit is brought or judgment rendered for a less amount than that of which the court has jurisdiction, and calculation of interest by the clerk 437

CHAP. 14.—Appeals from justices, &c. 437

CHAP. 15.—Costs 438

ARTICLE I. Taxation and re-taxation 438
" II. Security for costs 441

CHAP. 16.—Amendments 442

CHAP. 17.—For the correction of errors after judgment, prevention of abuse of process, and for re-hearings in certain cases 443

CHAP. 18.—Of the revival of judgment 445

CHAP. 19.—Of executions and forthcoming bonds 445

ARTICLE I. Form of, by whom and when issued 446
" II. Of the levy, sale and return 448
" III. Of the property subject to execution 451
" IV. The lien of executions 452
" V. Property exempt from execution 453
" VI. Forthcoming bonds and executions thereon 454

CHAP. 20.—Garnishments on judgments 455

CHAP. 21.—Of limitation of actions 456

ARTICLE I. Of the time within which suits must be brought 456
" II. General rules 457

Title 2.

SPECIAL PROCEEDINGS IN CERTAIN CASES.

CHAP. 1.—Attachments at law 460

ARTICLE I. Of the issue of attachments 460
" II. In what manner, and upon what property executed 463
" III. Of attachment for rent 465
" IV. Of the replevy and claim of property 466
" V. Proceedings against garnishee 467
" VI. Collateral issues 468
" VII. Ancillary attachments 470
" VIII. Judicial attachments 471
" IX. Of the pleadings in attachment 471
" X. Attachments against steam boats 472

CHAP. 2.—Trial of the right of property 474

CHAP. 3.—Summary judgments 476

ARTICLE I. General rules 476
" II. Proceedings against sheriffs, coroners and other executive officers ... 477
" III. In favor of sheriffs, &c. 478

ARTICLE IV. Against clerks of circuit and supreme courts 479
" V. Against judges of probate, tax collectors, tax assessors, notaries public and commissioners of other states 481
" VI. Against attorneys at law 482

CHAP. 4.—Proceedings by sureties 483

CHAP. 5.—To vacate charters of corporations, and prevent usurpation into office 485

CHAP. 6.—Mechanics' lien 488

CHAP. 7.—Partition of lands 489

CHAP. 8.—Proceedings in admiralty 491

CHAP. 9.—Arbitration 493

CHAP. 10.—To appoint and remove trustees 496

CHAP. 11.—Prison bounds, and insolvent debtors 497

ARTICLE I. Prison bounds 497
" II. Insolvent debtors 498

CHAP. 12.—Inquisitions of lunacy 500

Title 3.

PROCEEDINGS IN CIVIL CASES BEFORE JUSTICES OF THE PEACE.

CHAP. 1.—Powers and duties of justices of the peace and constables 502

CHAP. 2.—Special proceedings before justices of the peace 509

ARTICLE I. Summary judgments 509
" II. Trial of right of property 511
" III. Attachments 512
" IV. Forcible entry and unlawful detainer 514

Title 4.

PROCEEDINGS IN CHANCERY.

CHAP. 1.—Cases of which courts of chancery take cognizance, and of the bill, answer, replication and demurrer. 517

CHAP. 2.—Of amendments, exceptions, filing of papers and serving notices 521

CHAP. 3.—Evidence in chancery 524

CHAP. 4.—References to the register 525

CHAP. 5.—Decrees pro confesso 526

CHAP. 6.—Bills of review, ne exeat, equitable attachments and other writs of seizure 528

CHAP. 7.—Of injunctions and the appointment of receivers.... 531

CHAP. 8.—Creditors' bills..... 533

CHAP. 9.—Of the resignation, death and removal of trustees.. 534

CHAP. 10.—Of issues out of chancery..... 535

CHAP. 11.—Of the rendition, lien, effect and enforcement of decrees, and the costs..... 536

Title 5.

CHAP. 1.—Appeals..... 537

Title 6.

FEES.

CHAP. 1.—Fees of clerks of the circuit and supreme courts, judges of probate, registers in chancery, sheriffs and coroners, attorneys at law, attorney general, and solicitors, notaries public, justices of the peace and constables, and county surveyors..... 541

CHAP. 2.—General rules..... 548

Title 7.

SCHEDULE OF FORMS OF PLEADING IN CIVIL PROCEEDINGS.

CHAP. 1.—Forms..... 551

PART FOURTH.

Of crimes and their punishments; Jails and Penitentiary.

Title 1.

OF CRIMES AND THEIR PUNISHMENTS, AND THEIR PREVENTION.

CHAP. 1.—Definition of crimes, felonies, misdemeanors and petty offences..... 558

CHAP. 2.—Of certain indictable offences..... 559

ARTICLE I. Of offences against the public peace..... 559
" II. Of offences against the persons of individuals..... 560
" III. Of offences against public and private property..... 564
" IV. Of offences against public justice..... 576
" V. Of offences against public morality and decency..... 582
" VI. Of miscellaneous offences..... 587
" VII. Of offences against slaves..... 591
" VIII. Misdemeanors at common law..... 592

ARTICLE IX. Of petty offences cognizable before a justice of the peace..... 592
" X. Of offences committed by slaves, and in certain cases free persons of color; and proceedings in relation thereto..... 593
" XI. Of the duty of the sheriff in preserving the peace..... 597

Title 2.

OF PROCEEDINGS IN CRIMINAL CASES.

CHAP. 1.—Of proceedings to keep the peace..... 598

CHAP. 2.—Of the local jurisdiction of indictable offences..... 602

CHAP. 3.—Of the time of commencing criminal prosecutions.. 603

CHAP. 4.—Of the complaint and warrant of arrest; the execution of the same; the examination and discharge or commitment of the defendant, and proceedings as to the witnesses..... 604

CHAP. 5.—Of the arrest..... 609

CHAP. 6.—Of grand and petit jurors..... 612

ARTICLE I. Of the formation of grand and petit juries, and their compensation.. 612
" II. Of the powers and duties of the grand jury..... 619

CHAP. 7.—Of the indictment..... 621

CHAP. 8.—Of presenting the indictment in court; filing the same; ordering the defendant into custody; the issue and the execution of the writ of arrest; giving bail, and forfeiture..... 626

CHAP. 9.—Of witnesses in criminal cases..... 629

CHAP. 10.—Of the arraignment; and proceedings preliminary to the trial, and of the trial..... 631

ARTICLE I. Of the arraignment, preliminary proceedings, and trial..... 631
" II. Removal of the trial..... 635

CHAP. 11.—General provisions..... 637

CHAP. 12.—Of appeals and writs of error in criminal cases.... 641

CHAP. 13.—Of bail in criminal cases..... 643

CHAP. 14.—Of forfeitures against jurors, witnesses, and on undertakings of bail..... 646

CHAP. 15.—Reprieves, commutations and pardons..... 648

CHAP. 16.—Of the writ of habeas corpus, and proceedings thereon 649

Title 3.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

CHAP. 1.—Of the coroner's inquest, and proceedings thereon.. 658

CHAP. 2.—Of search warrants..... 661

CHAP. 3.—Vagrants..... 664

CHAP. 4.—Proceedings in cases of bastardy..... 665

CHAP. 5.—Absconding felons..... 668

CHAP. 6.—Fugitives from justice from other states..... 668

Title 4.

JAILS AND THE PENITENTIARY.

CHAP. 1.—Jails, jailors and prisoners..... 670

CHAP. 2.—The penitentiary..... 674

ARTICLE I. The lease of the penitentiary..... 674
" II. The organization of the penitentiary..... 678
" III. Powers and duties of the officers..... 679
" IV. Removal of prisoners to the penitentiary..... 682
" V. The police of the penitentiary and punishment of escapes..... 685
" VI. Service of process on, and taking testimony of convicts..... 691

Title 5.

FEES AND ALLOWANCES IN CRIMINAL CASES.

CHAP. 1.—Fees and allowances to officers in criminal cases.... 693

ARTICEE I. Fees and allowances to justices and constables, sheriffs, clerks of circuit courts, coroners, solicitors and attorneys general..... 693
" II. General provisions..... 696

Appendix..... 698

Forms of indictments..... 698

RULES OF COURT AND PRACTICE ADOPTED BY THE SUPREME COURT OF ALABAMA.

General rules..... 709

Rules of practice in circuit and county courts..... 714

Rules for the regulation of the practice in chancery..... 717

ARTICLES OF CONFEDERATION.

In Congress, July 8, 1778.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION

Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.

The style of this confederacy shall be, "*The United States of America.*"

ARTICLE II.

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III.

The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV.

§ 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; *Provided*, That such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhab-

itant; *Provided, also*, That no imposition, duties or restriction shall be laid by any State on the property of the United States, or either of them.

§ 2. If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice and be found in any of the United States, he shall, upon the demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offence.

§ 3. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V.

§ 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such a manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

§ 2. No State shall be represented in Congress by less than two nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person being a delegate be capable of holding any office under the United States for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

§ 3. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of these States.

§ 4. In determining questions in the United States in Congress assembled, each State shall have one vote.

§ 5. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

§ 1. No State, without the consent of the United States in Congress assembled, shall send any embassy to or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

§ 2. No two or more States shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the

United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§ 3. No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

§ 4. No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a regular and well-disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

§ 5. No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against a kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII.

When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII.

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and

improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ARTICLE IX.

§ 1. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article, of sending and receiving ambassadors, entering into treaties and alliances, *Provided*, That no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; *Provided*, That no member of Congress shall be appointed a judge of any of the said courts.

§ 2. The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the

secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned; *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" *Provided, also*, That no State shall be deprived of territory for the benefit of the United States.

§ 3. All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

§ 4. The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; *Provided*, That the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers: appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§ 5. The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "*A Committee of the States*," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; *Provided*, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of

the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, clothe, arm and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed and equipped, shall march to the place appointed and within the time agreed on by the United States in Congress assembled.

§ 6. The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

§ 7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate: and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ARTICLE X.

The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of

Congress as the United States in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; *Provided*, That no power be delegated to the said committee for the exercise of which, by the Articles of Confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ARTICLE XI.

Canada acceding to this confederation and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for the payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every State shall abide by the determination of the United States in Congress assembled, in all questions which by this confederation are submitted to them; and the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislature of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union, KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determination of the United States in Congress assembled, in all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands, in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

NEW HAMPSHIRE.

Josiah Bartlett,
John Wentworth, Jr.

CONNECTICUT.

Roger Sherman,
Samuel Huntingdon,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

MASSACHUSETTS BAY.

John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovel,
Samuel Holten.

NEW YORK.

Jas. Duane,
Fra. Lewis,
Wm. Duer,
Gouv. Morris.

RHODE ISLAND, &C.

William Ellery,
Henry Marchant,
John Collins.

NEW JERSEY.

Jno. Witherspoon,
Nath. Scudder.

PENNSYLVANIA.

Robert Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed.

NORTH CAROLINA.

John Penn,
Cons. Harnett,
Jno. Williams.

DELAWARE.

Thos. M'Kean,
John Dickinson,
Nicholas Van Dyke.

SOUTH CAROLINA.

Henry Laurens,
William Henry Drayton,
Jno. Matthews,
Richard Hutson,
Thomas Heyward, Jr.

MARYLAND.

John Hanson,
Daniel Carroll.

GEORGIA.

Jno. Walton,
Edwd. Telfair,
Edwd. Langworthy.

VIRGINIA.

Richard Henry Lee,
John Bannister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained: and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncom-

fortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with powers to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners

of their friends and brethren, or to fall themselves by their hands. He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as *FREE AND INDEPENDENT STATES*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton,

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

NEW YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris,

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark,

RHODE ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

DELAWARE.

Cesar Rodney,
George Read,
Thomas McKean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge.
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION I. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II. 1. The House of Representatives shall be composed of Members chosen every Second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose Three, Massachusetts Eight, Rhode Island and Providence Plantations One, Connecticut Five, New York Six, New Jersey Four, Pennsylvania Eight, Delaware One, Maryland Six, Virginia Ten, North Carolina Five, South Carolina Five, and Georgia Three.

4. When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall choose their Speaker and other Officers, and shall have the sole Power of Impeachment.

SECTION III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

2. Immediately after they shall be assembled in consequence of the first Election, they shall be divided, as equally as may be, into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the Fourth year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen, by Resignation or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other Officers, and also a Presi-

dent pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have sole Power to try all Impeachments. When sitting for that Purpose they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside; And no person shall be convicted without the Concurrence of two thirds of the Members present.

7. Judgment, in Cases of Impeachment, shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of honor, Trust, or Profit, under the United States; but the Party convicted shall, nevertheless, be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

SECTION IV. 1. The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION V. 1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

3. Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION VI. 1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no Person

holding any Office under the United States, shall be a member of either House during his Continuance in Office.

SECTION VII. 1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within Ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him; or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION VIII. The Congress shall have Power

1. To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish an uniform Rule of Naturalization and uniform Laws on the subject of Bankruptcies throughout the United States;

5. To coin Money, regulate the Value thereof, and of foreign Coins, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of Counterfeiting the Securities and current Coin of the United States;

7. To establish Post Offices and post Roads;

8. To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the supreme Court;

10. To define and punish Piracies and felonies committed on the high Seas, and Offences against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning captures on Land and Water;

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16. To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States, respectively, the Appointment of the Officers, and the authority of training the Militia according to the Discipline prescribed by Congress;

17. To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings,—And

18. To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION IX. 1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.

3. No Bill of Attainder or ex post facto Law shall be passed.

4. No Capitation, or other Direct Tax shall be laid, unless in Proportion to the Census Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION X. 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. No State shall, without the consent of the Congress, lay any Imposts or duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the nett Produce of all Duties and Imposts, laid by any State on Imports or exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

SECTION I. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows:

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3.* The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a list of all the Persons voted for, and of the number of votes for each; which List they shall sign and certify, and transmit sealed to the Seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the Certificates, and the votes shall then be counted. The Person having the greatest number of Votes shall be the President, if such a Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote: A Quorum for this Purpose shall consist

* This 3d clause (of the 1st section of article 2d) has been superseded by the 12th amendment. Vid. post, p. 24.

of a Member or Members from two thirds of the States, and a Majority of the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.

4. The Congress may determine the Time of choosing the Electors, and the day on which they shall give their Votes; which day shall be the same throughout the United States.

5. No person except a natural born Citizen, or a Citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

8. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute "the Office of President of the United States, and will, to the best "of my Ability, preserve, protect and defend the Constitution of "the United States."

SECTION II. 1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have power to grant reprieves and Pardons for Offences against the United States, except in cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, and other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such infe-

rior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. The President shall have Power to fill up all vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the end of their next Session.

SECTION III. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such time as he shall think proper: he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

SECTION IV. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION I. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior; and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION II. 1. The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority: to all Cases affecting Ambassadors, other Public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States, between a State and Citizens of another State, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.

2. In all cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury, and such Trial shall be held in the State where the said Crimes shall have been committed, but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION III. 1. Treason against the United States shall consist only in Levying War against them, or in Adhering to their Enemies, giving them Aid and Comfort. No Person shall be Convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason; but no Attainder of Treason shall work Corruption of Blood, or Forfeiture, except during the Life of the Person Attainted.

ARTICLE IV.

SECTION I. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

SECTION II. 1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A person Charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on demand of the Executive Authority of the State from which he fled, be Delivered up, to be Removed to the State having Jurisdiction of the Crime.

3. No person held to Service or Labor in one State under the Laws thereof, Escaping into another, shall, in consequence of any Law or Regulation therein, be Discharged from such Service or Labor; but shall be Delivered up on Claim of the Party to whom such Service or Labor may be due.

SECTION III. 1. New States may be Admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have Power to dispose of, and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and Nothing in this Constitution shall be so Construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION IV. The United States shall Guarantee to every State in this Union a Republican form of Government, and shall Protect each of them against Invasion; and, on application of the Legislature, or of the Executive, (when the Legislature cannot be convened,) against Domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem

it necessary, shall propose Amendments to this Constitution; or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be Valid, to all Intents and Purposes, as part of this Constitution, when Ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand one hundred and eight, shall in any manner Affect the first and fourth Clauses in the ninth Section of the first Article; and that no State, without its Consent, shall be Deprived of its Equal Suffrage in the Senate.

ARTICLE VI.

1. All Debts contracted and Engagements entered into before the Adoption of this Constitution, shall be as Valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby; anything in the Constitution or Laws of any State to the Contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all Executive and Judicial Officers, both of the United States and of the several States, shall be Bound by Oath or Affirmation to Support this Constitution; but no Religious Test shall ever be Required as a Qualification to any Office or Public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of Nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the Unanimous Consent of the States present, the Seventeenth Day of September, in the Year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorman,
Rufus King.

DELAWARE.

George Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jacob Broom.

CONNECTICUT.

William S. Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersol,
James Wilson,
Governeur Morris.

MARYLAND.

James McHenry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, Jr.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest,

WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

* March 4, 1793.

ARTICLE III.

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.*

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.†

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be

---

* December 2, 1793. † October 17, 1803.

a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ACT FOR THE ADMISSION OF ALABAMA.

AN ACT

To enable the people of Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States.

[Passed March 2, 1819.]

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of the territory of Alabama be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatsoever.

§ 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bearcreek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning.

§ 3. *And be it further enacted,* That it shall be the duty of the surveyor of the lands of the United States south of the State of Tennessee and the surveyor of the public lands in the Alabama territory, to run, and cut out the line of demarkation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the north-

west corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the north-west corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagoula.

§ 4. *And be it further enacted*, That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby authorized to choose representatives to form a constitution, who shall be appointed among the several counties as follows:

From the county of Madison, eight representatives:
From the county of Monroe, four representatives:
From the county of Blount, three representatives:
From the county of Limestone, three representatives:
From the county of Shelby, three representatives:
From the county of Montgomery, two representatives:
From the county of Washington, two representatives;
From the county of Tuskaloosa, two representatives:
From the county of Lawrence, two representatives:
From the county of Franklin, two representatives:
From the county of Cotaco, two representatives:
From the county of Clarke, two representatives:
From the county of Baldwin, one representative:
From the county of Cahawba, one representative:
From the county of Conecuh, one representative:
From the county of Dallas, one representative:
From the county of Marengo, one representative:
From the county of Marion, one representative:
From the county of Mobile, one representative:
From the county of Lauderdale, one representative:
From the county of St. Clair, one representative:
From the county of Autauga, one representative.

And the election for representatives aforesaid shall be holden on the first Monday and Tuesday in May next, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations as prescribed by the laws of the said territory, regulating elections therein for the members of the house of representatives.

§ 5. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet, at the town of Huntsville, on the first Monday in July next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not expedient, at that time, to form a constitution and state government for the people within the said territory: and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: *Provided*, that the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the

thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory north-west of the river Ohio, so far as the same has been extended to the said territory, by the articles of agreement between the United States and the State of Georgia, or of the constitution of the United States.

§ 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.

Second. That all salt springs within the said territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used, under such terms, conditions, and regulations, as the legislature of the said state shall direct: *Provided*, the said legislature shall never sell nor lease the same for a longer term than ten years at any one time.

Third. That five per cent. of the nett proceeds of the lands lying within the said territory, and which shall be sold by Congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two fifths to the making of a road or roads leading to the said state, under the direction of congress.

Fourth. That thirty-six sections, or one entire township, to be designated by the Secretary of the Treasury, under the direction of the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state to be appropriated solely to the use of such seminary by the said legislature. And the Secretary of the Treasury, under the direction as aforesaid, may reserve the seventy-two sections, or two townships, hereby set apart for the support of a seminary of learning, in small tracts: *Provided*, that no tract shall consist of less than two sections: *And provided always*, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States [and, moreover, that each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax

laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof];* and that the lands belonging to the citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on lands, the property of the United States; and that all navigable waters within the said state shall forever remain public highways, free to the citizens of said state, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

§ 7. *And be it further enacted*, That in lieu of a section of land, provided to be reserved for the seat of government of the said territory, by an act, entitled "An Act respecting the surveying and sale of the Public Lands in the Alabama Territory," there be granted to the said state, for the seat of government thereof, a tract of land containing sixteen hundred and twenty acres, and consisting of sundry fractions and a quarter section, in sections thirty-one and thirty-two, in township sixteen, and range ten, and in sections five and six, in township fifteen, and range ten, and in sections twenty-nine and thirty, in the same township and range, lying on both sides of the Alabama and Cahawba rivers, and including the mouth of the river Cahawba, and which heretofore has been reserved from public sale, by order of the President of the United States.

§ 8. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

§ 9. *And be it further enacted*, That, in case the said convention shall form a constitution and state government for the people of the territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to congress for its approbation.

CONSTITUTION OF THE STATE OF ALABAMA.†

We, the people of the Alabama Territory, having the right of admission into the General Government, as a member of the Union, consistent with the Constitution and laws of the United States, by our Representatives, assembled in Convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred

* This part of the proviso was repealed by the act of Congress of January 26, 1847, herein published.

† The parts in brackets have been modified by the amendments.

and nineteen, in pursuance of an act of Congress, entitled "An Act to enable the people of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following Constitution or Form of Government; and do mutually agree with each other to form ourselves into a free and independent State, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said State by the act of Congress aforesaid, "to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the State of Georgia; thence, along said line, to the southern boundary line of the State of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of Congress, and subject to such enlargement as may be made by law, in consequence of any cession of territory by the United States, or either of them.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

§ 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

§ 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

§ 3. No person within this State shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

§ 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

§ 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

§ 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished or enlarged, on account of his religious principles.

§ 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship; and no religious test shall ever be required as a qualification to any office or public trust under this State.

§ 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§ 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

§ 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed; he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

§ 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

§ 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

§ 13. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

§ 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial, or delay.

§ 15. No power of suspending laws shall be exercised, except by the General Assembly, or its authority.

§ 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

§ 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of "*habeas corpus*" shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

§ 18. The person of a debtor, when there is not strong presumption of fraud, shall not be detained in prison, after delivering up his

estate for the benefit of his creditors, in such manner as shall be prescribed by law.

§ 19. No *ex post facto* law, nor law impairing the obligation of contracts shall be made.

§ 20. No person shall be attainted of treason or felony by the General Assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

§ 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

§ 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

§ 23. Every citizen has a right to bear arms in defence of himself and the State.

§ 24. No standing army shall be kept up without the consent of the General Assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§ 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§ 26. No title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; nor shall any office be created, the appointment of which shall be for a longer term than during good behavior.

§ 27. Emigration from this State shall not be prohibited, nor shall any citizen be exiled.

§ 28. The right of trial by jury shall remain inviolate.

§ 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this State, by him or herself, or counsel.

§ 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall remain void.

ARTICLE II.

Distribution of Powers.

§ 1. The powers of the Government of the State of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

§ 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

Legislative Department.

§ 1. The legislative power of this State shall be vested in two distinct branches: the one to be styled the Senate, the other the House of Representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

§ 2. The members of the House of Representatives shall be chosen by the qualified electors, and shall serve for the term of [one year] from the day of the commencement of the general election, and no longer.

§ 3. The representatives shall be chosen [every year] on the first Monday and the day following in August, until otherwise directed by law.

§ 4. No person shall be a representative, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

§ 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector: provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this State; and provided, also, that no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

§ 6. Electors shall, in all cases except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

§ 7. In all elections by the people, the electors shall vote by ballot, until the General Assembly shall otherwise direct.

§ 8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law: provided, that when it shall appear to the General Assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate rep-

presentation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; and provided, that if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation: and provided, also, that when there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

[§ 9. The General Assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the State, and the whole number of the representatives shall, at the first session held after making every such enumeration, be fixed by the General Assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The House of Representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred: provided, however, that each county shall be entitled to at least one representative.]

§ 10. The General Assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the State into the same number of districts, as nearly equal, in the number of white inhabitants, as may be, each of which districts shall be entitled to one senator and no more: provided, that the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

§ 11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists, shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

§ 12. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the House of Representatives; and no person shall be a senator, unless he be a white

man, a citizen of the United States, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

[§ 13. The senators chosen according to the apportionment under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.]

§ 14. The House of Representatives, when assembled, shall choose a Speaker, and its other officers; and the Senate shall, [annually,] choose a President, and its other officers; each house shall judge of the qualifications, elections, and returns, of its own members: but a contested election shall be determined in such manner as shall be directed by law.

§ 15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

§ 16. Each house may determine the rules of its own proceedings, punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

§ 17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings; provided, that such imprisonment shall not, at any time, exceed forty-eight hours.

§ 18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

§ 19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the General Assembly is convened; nor shall any member be liable to answer for any thing spoken in debate in either house, in any court or place elsewhere.

§ 20. When vacancies happen in either house, the Governor, or the person exercising the powers of the Governor, shall issue writs of election to fill such vacancies.

§ 21. The doors of each House shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

§ 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§ 23. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law, until on three several days it be read in each house, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house in which the bill shall be depending may deem it expedient to dispense with this rule: and every bill, having passed both houses, shall be signed by the Speaker and President of their respective houses: provided, that all bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

§ 24. Each member of the General Assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

§ 25. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

§ 26. No person holding any lucrative office under the United States (the office of post-master excepted), this State, or any other power, shall be eligible to the General Assembly: provided, that the offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum, or county court, while it has no salary, shall not be deemed lucrative.

§ 27. No person, who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

§ 28 The first election for senators and representatives shall be general throughout the State; and shall be held on the third Monday and Tuesday in September next.

[§ 29. The first session of the General Assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the General Assembly to be held in the year one thousand eight hundred and twenty-five; during that session the General Assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed: provided, however, that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba; and provided also, that the General Assembly shall make no

appropriations, previous to the year one thousand eight hundred and twenty-five, for the building of any other State-house than that now provided for by law.]

ARTICLE IV.

Executive Department.

§ 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Alabama.

§ 2. The Governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

§ 3. The returns of every election for Governor shall be sealed up, and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the General Assembly. The person having the highest number of votes shall be Governor, but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of both houses. Contested elections for Governor shall be determined by both houses of of the General Assembly, in such manner as shall be prescribed by law.

§ 4. The Governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this State at least four years next preceding the day of his election.

§ 5. He shall, at stated times, receive a compensation jor his services, which shall not be increased or diminished during the term for which he shall have been elected.

§ 6. He shall be commander-in-chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the General Assembly shall fix his rank.

§ 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

§ 8. He may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next [annual] meeting of the General Assembly.

§ 9. He shall, from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§ 10. He shall take care that the laws be faithfully executed.

§ 11. In all criminal and penal cases, except in those of treason

and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons; and he may, in the recess of the Senate, respite the sentence until the end of the next session of the General Assembly.

§ 12. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and the present seal of the State, until otherwise directed by the General Assembly.

§ 13. All commissions shall be in the name and by the authority of the State of Alabama, be sealed with the State seal, signed by the Governor, and attested by the Secretary of State.

§ 14. There shall be a Secretary of State, appointed by joint vote of both houses of the General Assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the General Assembly; and shall perform such other duties as may be required of him by law.

§ 15. Vacancies that may happen in offices, the appointment to which is vested in the General Assembly, shall be filled by the Governor, during the recess of the General Assembly, by granting commissions which shall expire at the end of the next session.

§ 16. Every bill which shall have passed both houses of the General Assembly shall be presented to the Governor: if he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be considered; if approved by a majority of the whole number elected to that house, it shall become a law: but in such cases, the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: if any bill shall not be returned by the Governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not be a law.

§ 17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill.

§ 18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, until the time pointed out by this constitution for the election of Governor shall arrive, un-

less the General Assembly shall provide by law for the election of a Governor to fill such vacancy, or until the Governor absent or impeached shall return or be acquitted.

§ 19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the House of Representatives shall, in like manner, administer the government.

§ 20. The President of the Senate and Speaker of the House of Representatives, during the time they respectively administer the government, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office.

§ 21. The Governor shall always reside, during the session of the General Assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

§ 22. No person shall hold the office of Governor, and any other office or commission, civil or military, either in this State, or under any State, or the United States, or any other power, at one and the same time.

§ 23. A State Treasurer and a Comptroller of Public Accounts shall be annually elected, by a joint vote of both houses of the General Assembly.

§ 24. A Sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the Governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the Sheriff then elected shall continue in office three years.

Militia.

§ 1. The General Assembly shall provide by law for organizing and disciplining the militia of this State, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

§ 2. Any person, who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

§ 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

§ 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: provided, that the General Assembly shall not make any such elections or appointments, other than those of adjutants general, and quarter-masters general.

§ 5. The Governor shall appoint his aids-de-camp; majors general, their aids-de-camp, and and all other division and staff officers;

brigadiers general shall appoint their aids, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

§ 6. The General Assembly shall fix by law the method of dividing the militia into brigades, regiments, battalions, and companies, and shall fix the rank of all staff officers.

ARTICLE V.

Judicial Department.

§ 1. The judicial power of this State shall be vested in one supreme Court, circuit Courts to be held in each county in the State, and such inferior courts of law and equity, to consist of not more than five members, as the General Assembly may, from time to time, direct, ordain and establish.

§ 2. The supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law: *Provided*, That the supreme Court shall have power to issue writs of injunction, *mandamus*, *quo warranto*, *habeas corpus*, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

§ 3. Until the General Assembly shall otherwise prescribe, the powers of the supreme Court shall be vested in, and its duties shall be performed by, the judges of the several circuit Courts within this State; and they, or a majority of them, shall hold such sessions of the supreme Court, and at such times as may be directed by law: *Provided*, That no judge of the supreme Court shall be appointed before the commencement of the first session of the General Assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

§ 4. The supreme Court shall be holden at the seat of Government, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease.

§ 5. The State shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties; and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

§ 6. The circuit Court shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

§ 7. A circuit Court shall be held in each county in the State, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

§ 8. The General Assembly shall have power to establish a Court or Courts of Chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit Courts

respectively; *Provided*, That the judges of the several circuit Courts shall have power to issue writs of injunction, returnable into the Courts of Chancery.

§ 9. The General Assembly shall have power to establish, in each county within this State, a Court of Probate, for the granting of letters testamentary and of administration and for orphans' business.

§ 10. A competent number of Justices of the Peace shall be appointed in and for each county, in such mode and for such term of office as the General Assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases, tried by a Justice of the Peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

§ 11. Judges of the supreme and circuit Courts, and Courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this State, the United States, or any other power.

§ 12. Chancellors, Judges of the supreme Court, [Judges of the circuit Courts, and Judges of the inferior Courts,] shall be elected by joint vote of both Houses of the General Assembly.

[§ 13. The Judges of the several Courts in this State shall hold their offices during good behavior; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them, on the address of two-thirds of each House of the General Assembly; *Provided, however*, That the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each House; *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each House respectively; *And provided, also*, That the Judges of the several circuit Courts, who shall be appointed before the commencement of the first session of the General Assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, shall only hold their offices during good behavior, until the end of the said session, at which time their commissions shall expire.]

§ 14. No person who shall have arrived at the age of seventy years shall be appointed to, or continue in, the office of Judge in this State.

§ 15. Clerks of the circuit and inferior Courts in this State shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur, subsequent to an election, it shall be filled by the Judge or Judges of the Court in which such vacancy exists; and the person so appointed shall hold his office until the next general election; *Provided, however*, that after the year one thousand eight hundred and

twenty-six, the General Assembly may prescribe a different mode of appointment, but shall not make such appointment.

§ 16. The Judges of the supreme Court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the judges of the circuit Courts in their respective districts, and judges of the inferior Courts in their respective counties.

§ 17. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the State of Alabama, and shall conclude "against the peace and dignity of the same."

§ 18. There shall be an Attorney-General for the State, and as many Solicitors as the General Assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

Impeachments.

§1. The House of Representatives shall have the sole power of impeaching.

§ 2. All impeachments shall be tried by the Senate: when sitting for that purpose, the Senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

§ 3. The Governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and to disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VI.

General Provisions.

§ 1. The members of the General Assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of ————, according to law: So help me God."

§ 2. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

§ 3. The General Assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

§ 4. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the State, who shall be convicted of having given or offered any bribe to procure his election or appointment.

§ 5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

§ 6. In all elections by the General Assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journals.

§ 7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

§ 8. All lands liable to taxation in this State, shall be taxed in proportion to their value.

§ 9. The General Assembly shall direct, by law, in what manner, and in what Courts, suits may be brought against the State.

§ 10. It shall be the duty of the General Assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

§ 11. Absence on business of this State, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

§ 12. No member of Congress, nor any person holding any office of profit or trust under the United States, (the office of postmaster excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this State.

§ 13. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery; and no decree for such divorce shall have effect, until the same shall be sanctioned by two-thirds of both Houses of the General Assembly.

§ 14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts.

§ 15. Returns of all elections for officers, who are to be commissioned by the Governor, and for members of the General Assembly, shall be made to the Secretary of State.

§ 16. No new county shall be established by the General Assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation.

§ 17. The General Assembly shall, at their first session, which may

be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this State, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the General Assembly; and, in all cases of ceded territory acquired by the State, the General Assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which only shall be altered in like manner: *Provided*, That no county, hereafter to be formed, shall be of less extent than nine hundred square miles.

§ 18. It shall be the duty of the General Assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

§ 19. It shall be the duty of the General Assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

§ 20. Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged, under proper heads, and promulgated in such manner as the General Assembly may direct; and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

§ 21. The General Assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this State, and for making a systematic and economical application of the means appropriated to those objects.

§ 22. In the event of the annexation of any foreign territory to this State, by a cession from the United States, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession; anything in this Constitution to the contrary notwithstanding.

Education.

Schools, and the means of education, shall for ever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature and the sciences;

and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

Establishment of Banks.

§ 1. One State bank may be established, with such number of branches as the General Assembly may, from time to time, deem expedient; *Provided*, That no branch bank shall be established, nor bank charter renewed, under the authority of this State, without the concurrence of two-thirds of both Houses of the General Assembly; *And provided, also*, That not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the General Assembly, nor shall any bank or branch bank be established, or bank charter renewed, but in conformity with the following rules:

1. At least two-fifths of the capital stock shall be reserved for the State.

2. A proportion of power in the direction of the bank shall be reserved to the State, equal at least to its proportion of stock therein.

3. The State, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.

4. The remedy for collecting debts shall be reciprocal, for and against the bank.

5. No bank shall commence operations, until half of the capital stock subscribed for be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.

6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the General Assembly shall sanction such suspension of specie payments, and the General Assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.

7. After the establishment of a general State Bank, the banks of this State now existing may be admitted as branches thereof, upon such terms as the Legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

Slaves.

§ 1. The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with

them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided, also*, That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this State as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

§ 2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the General Assembly shall have no power to deprive them of an impartial trial by a petit jury.

§ 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Mode of Amending and Revising the Constitution.

The General Assembly, whenever two-thirds of each House shall deem it necessary, may propose amendments to this Constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the Secretary of State for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this State, voting for Representatives, have voted in favor of such proposed amendments, and two-thirds of each House of the next General Assembly, shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this Constitution: *Provided*, That the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each House.

SCHEDULE.

§ 1. That no inconvenience may arise from a change of territorial to a permanent State government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies

corporate, shall continue as if no such change had taken place: and all process, which shall, before the third Monday in September next, be issued in the name of the Alabama territory, shall be as valid as if issued in the name of the State.

§ 2. All fines, penalties, forfeitures, and escheats, accruing to the Alabama territory, shall accrue to the use of the State.

§ 3. The validity of all bonds and recognizances, executed to the Governor of the Alabama territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the Governor of the State of Alabama and his successors in office; and all criminal or penal actions, arising or now depending within the limits of this State, shall be prosecuted to judgment and execution in the name of said State, all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this State, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

§ 4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama territory, within this State, shall continue to hold and exercise their respective offices under the authority of this State, until they shall be superseded under the authority of this constitution, and shall receive from the treasury of this State the same compensation which they heretofore received, in proportion to the time they shall be so employed. The Governor shall have power to fill vacancies by commissions, to expire so soon as elections or appointments can be made to such offices by authority of this constitution.

§ 5. All laws and parts of laws, now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered, or repealed, by the Legislature thereof.

§ 6. Every white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this State at the time of the adoption of this constitution, shall be deemed a qualified elector at the first election to be holden in this State. And every white male person who shall reside within the limits of this State at the time of the adoption of this constitution, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust, or profit under this State; any thing in this constitution to the contrary notwithstanding.

§ 7. The President of this Convention shall issue writs of election directed to the Sheriffs of the several counties, requiring them to cause an election to be held for a Governor, representative to the Congress of the United States, members of the General Assembly, clerks of the several courts, and Sheriffs of the respective counties, at the respective places of election in said counties, on the third Monday and the day following in September next, which election shall be conducted in the manner prescribed by the existing election laws of the Alabama territory; and the said Governor and members of the General Assembly, then duly elected, shall continue to discharge the duties of their respective offices, for the time prescribed by this constitution, and until their successors shall be duly qualified.

§ 8. Until the first enumeration shall be made, as directed by this Constitution, the county of Autauga shall be entitled to two representatives; the county of Baldwin to one representative; the county of Blount to three representatives; the county of Cahawba to one representative; the county of Clarke to two representatives; the county of Conecuh to two representatives; the county of Cotaco to two representatives; the county of Dallas to two representatives; the county of Franklin to two representatives; the county of Lauderdale to two representatives; the county of Lawrence to two representatives; the county of Madison to eight representatives; the county of Marion to one representative; the county of Monroe to five representatives; the county of Montgomery to three representatives; the county of Mobile to one representative; the county of St. Clair to one representative; the county of Shelby to two representatives; the county of Tuskaloosa to two representatives; and the county of Washington to two representatives. And each county shall be entitled to one senator, who shall serve for one term.

§ 9. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the General Assembly shall otherwise direct.

ORDINANCE.

THIS Convention, for and in behalf of the people inhabiting this State, do accept the proposition offered by the act of Congress, under which they are assembled; and this Convention, for and in behalf of the people inhabiting this State, do ordain, agree, and declare, that they forever disclaim all right and title to the waste or unappropriated lands lying within this State; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this State, whether for State, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sales thereof, and that the lands belonging to the citizens of the United States, residing out of the limits of this State, shall never be taxed higher than the lands belonging to persons residing therein, and that no tax shall be imposed on the property of the United States; and that all navigable waters within this State shall forever remain public highways, free to the citizens of this State and of the United States, without any tax, duty, impost, or toll therefor, imposed by this State: and this ordinance is hereby declared irrevocable, without the consent of the United States.

Done in convention at Huntsville, this second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of American Independenee the forty-fourth.

J. W. WALKER,
President of the Convention.

Attest:
JOHN CAMPBELL, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

First.—Adopted January, 1830.*

The Judges of the several courts of this State shall hold their offices for the term of six years; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them on the address of two-thirds of each house of the General Assembly: *Provided, however*, That the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the Journals of each house: *And provided, further*, That the cause or causes shall be notified to the Judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the Journals of each house respectively: *And provided, also*, That the judges now in office may hold their offices until the session of the General Assembly which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment.

Second.—Adopted 1846.

Strike out the words "one year" where they occur in the second section of the third article, and insert in lieu thereof "two years."

Strike out the words "every year" where they occur in the third section of third article, and insert in lieu thereof "at each session."

Strike out the word "annual" where it occurs in the eighth section of the fourth article, and insert in lieu thereof, "biennial."

Strike out the thirteenth section of the third article, and insert in lieu thereof the following: "at the first meeting of the General Assembly after the adoption of the proposed amendments, the senators when convened shall be divided into two classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the two next ensuing yeras; so that one half may be biennially chosen thereafter, and a rotation thereby kept up perpetually."

Strike out the twenty-ninth section of the third article, which permanently locates the seat of government in this State.

Third.—Adopted 1850.

Strike out the ninth section of the third article of the Constitution, and in lieu thereof insert the following:

* This amendment strikes out the thirteenth section of the fifth article.

"§ 9. The General Assembly shall cause an enumeration to be made in the year eighteen hundred and fifty, and eighteen hundred and fifty-five, and every ten years thereafter, of all the white inhabitants of this State; and the whole number of representatives shall at the first regular session after such enumeration, be apportioned among the several counties, cities, or towns entitled to separate representation, according to their respective number of white inhabitants, and the said apportionment when made shall not be subject to alteration until after the next census shall be taken. The number of representatives shall not exceed one hundred, and the number of senators shall not exceed thirty-three; yet each county, notwithstanding it may not have a number of white inhabitants equal to the ratio fixed, shall have one representative."

Strike out the thirteenth section of the third article of the Constitution, and insert in lieu thereof the following:

"§ 13. Senators shall be chosen for the term of four years: yet at the general election after every new apportionment, elections shall be held anew in every senatorial district; and the senators elected, when convened at the first session, shall be divided by lot into two classes, as nearly equal as may be: the seats of those of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years, dating in both cases from the day of election, so that one-half may be biennially chosen, except as above provided."

At the end of the twelfth section of the fifth article of the Constitution add—

"But at and after the session of the General Assembly to be held in the winter of the years eighteen hundred and forty-nine–fifty, the General Assembly shall provide by law for the election of judges of the Circuit Courts by the qualified electors of their circuits respectively, and for the elections of judges of the Courts of Probate and other inferior courts (not including chancellors) by the qualified electors of the counties, cities, or districts for which such courts may be respectively established; the first Monday in November in any year shall be the day for any election of such judges by the people, or such other day, not to be within a less period than two months of the general election for Governor, members of the General Assembly, or members of Congress, as the General Assembly may by law prescribe: but no change to be made in any circuit or district, or in the mode or time of electing, shall affect the right of any judge to hold office during the term prescribed by the Constitution, except at the first elections thereof to be made by the people after the ratification of these amendments or either of them, which elections shall then all be had on the same day throughout the State, and the terms of the judges then to be elected shall commence on that day: vacancies in the office of judge shall be filled by the Governor, and the persons appointed thereto by him shall hold until the next first Monday in November, or other election day of judges, and until the election and qualification of their successors respectively; and the General Assembly shall have power to annex to the offices of any of the judges of the inferior courts the duties of clerks of such courts respectively."

ACTS OF CONGRESS.

AN ACT

(*Of Congress of 26th May*, 1790,) *To prescribe the mode in which the Public Acts, Records, and Judicial Proceedings in each State shall be authenticated, so as to take effect in every other State.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the acts of the Legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto; that the records and judicial proceedings of the courts of any state shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form; and the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken.

AN ACT

(*Of Congress of 27th March*, 1804,) *Supplementary to the Act entitled "An Act to prescribe the mode in which the Public Acts, Records, and Judicial Proceedings in each State shall be authenticated so as to take effect in every other State."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That from and after the passage of this act all records and exemplifications of office books which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office, in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept, or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificates, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the

chancellor, or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made; and the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken.

§ 2. *And be it further enacted*, That all the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states.

AN ACT

(*Of Congress of March* 2, 1827,) *To authorize the Legislature of the State of Alabama to sell the Lands heretofore appropriated for the use of Schools in that State.*

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the legislature of the state of Alabama shall be and is hereby authorized to sell and convey, in fee simple, all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said state, and to invest the money arising from the sale thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislature, for the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatsoever; *Provided*, Said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said state shall by law direct; *And provided, also*, That in the apportionment of the proceeds of said fund each township and district aforesaid shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

§ 2. *And be it further enacted*, That if the proceeds accruing to any township or district from said fund shall be insufficient for the support of schools therein, it shall be lawful for said legislature to invest the same as is herein before directed, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same.

AN ACT

(*Of Congress of July* 4, 1836,) *To carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States in regard to the five per cent. fund and the school reservations.*

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a sum equiva-

lent to five per cent. of the nett proceeds of the lands within the state of Mississippi, ceded by the Chickasaws by the treaty of the twentieth of October, eighteen hundred and thirty-two, which have been or may hereafter be sold by Congress, shall be and is hereby reserved out of any moneys in the treasury not otherwise appropriated, to be applied in the same manner, and for the same uses and purposes as is designated by the fifth section of the act of Congress of the first of March, eighteen hundred and seventeen.

§ 2. *And be it fvrther enacted*, That there shall be reserved from sale in the state of Mississippi a quantity of land equal to one thirty-sixth part of the lands ceded by said Chickasaws as aforesaid, within said state of Mississippi, which lands shall be selected under the direction of the secretary of the treasury, in sections, or half sections, or quarter sections, out of any public lands remaining unsold, that shall have been offered at public sale within either of the land districts in said state of Mississippi contiguous to said lands within said state, so ceded by the Chickasaws as aforesaid, which lands, when so selected as aforesaid, the same shall vest in the state of Mississippi for the use of schools within said territory in said state, so ceded as aforesaid by the Chickasaws; and said lands, thus selected, shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as the said state now holds the lands heretofore reserved for the use of schools in said state.

§ 3. *And be it further enacted*, That a sum equivalent to five per cent. of the nett proceeds of the lands within the state of Alabama ceded by the Chickasaws by the treaty aforesaid, which have been or may hereafter be sold by congress, shall be, and is hereby reserved, out of any moneys in the treasury, not otherwise appropriated, to be applied in the same manner, and for the same uses and purposes as is designated by the sixth section of the act of Congress of the second of March, eighteen hundred and nineteen.

§ 4. *And be it further enacted*, That there shall be reserved from sale in the state of Alabama a quantity of land equal to one thirty-sixth part of the lands ceded by the Chickasaws as aforesaid, within said state of Alabama, which land shall be selected under the direction of the secretary of the treasury, in sections, or half sections, or quarter sections, out of any public lands remaining unsold, that shall have been offered at public sale within any land district in said state of Alabama contiguous to said lands within said state so ceded by the Chickasaws as aforesaid, which lands, when so selected as aforesaid, the same shall vest in the state of Alabama for the use of schools within said territory in said state, so ceded as aforesaid by the Chickasaws; and said lands thus selected shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as the said state now holds the lands heretofore reserved for the use of schools in said state.

AN ACT

(*Of Congress of* 16*th August*, 1842,) *Authorizing the settlement and payment of certain claims of the State of Alabama.*

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the secretary of

war be and hereby is directed to audit and adjust the claims of the state of Alabama, under such laws and regulations as have heretofore governed the department in auditing and allowing the claims of the states on the United States, for moneys advanced and paid by said state for subsistence, supplies, and services of local troops called into service by and under the authorities of said state, but not mustered into the service of the United States, and for provisions and forage furnished the friendly Indians during the Creek and Seminole hostilities, in the years eighteen hundred and thirty-six and eighteen hundred and thirty-seven, in all cases in which the payment was for subsistence, supplies, service, provisions, and forage, which would have been paid for under existing laws and regulations, if such troops had been mustered into the service of the United States, and the provision and forage had been furnished by an agent of the United States; and that the sum so found due to said state be paid out of any money in the treasury not otherwise appropriated; *Provided*, That in auditing and adjusting said claims, duly authenticated copies of papers which have been lost or destroyed, upon due proof of such loss or destruction, shall be received as evidence.

§ 2. *And be it further enacted*, That the secretary of war be, and he hereby is required to report to the House of Representatives a schedule of such claims as may be presented for adjustment under this act, and not allowed, with the reasons for such disallowance, at the next session of congress.

AN ACT

(*Of Congress of August* 11, 1848,) *To authorize the State of Alabama to apply certain lands heretofore granted to that State for internal improvements, for the use of schools, in the valueless sixteenth sections in said State.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands granted to the state of Alabama for purposes of internal improvement, by the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September fourth, eighteen hundred and forty-one, may be, and the same are hereby placed at the disposal of the legislature of said state, at such price as said legislature may direct, to be applied for the use of schools in such townships of said state as in which the sixteenth or school sections are comparatively valueless, and the legislature may locate said lands in any legal subdivisions, not less than forty acres, within the limits of said state.

AN ACT

Declaring the assent of Congress to certain States to impose a tax upon all lands hereafter sold by the United States therein, from and after the date of such sale. Approved January 26, 1847.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress

is hereby given to the several States admitted into the Union prior to the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and twenty, to impose a tax or taxes on lands hereafter to be sold by the United States, in said state, from and after the day of such sale: *Provided*, That the assent hereby given shall in no wise impair that provision of the compact with the said states which declares that all lands belonging to citizens of the United states residing without the said states, shall never be taxed higher than lands belonging to persons residing therein.

CODE OF ALABAMA.

THE CODE OF ALABAMA.

PART FIRST.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE; THE STATE ORGANIZATION; ITS COMMERCIAL, SANITARY, AND POLICE REGULATIONS.

Title 1.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAPTER I.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

SEC.

1. The signification of words, as distinguished by sense, gender, or number; of the words and terms, "person," "writing," "oath," "signature" or "subscription," "lunatic," "non compos mentis," "insane."
2. Meaning of the words "property," "real property," "personal property," "negro," "mulatto," "person of color."
3. Joint authority executed by majority.
4. Meaning of the word "justice," applied to a magistrate.
5. Meaning of the words "preceding" and "following."
6. Of the word "State."
7. Of the term "United States."
8. Of the word "month."
9. If bond required to be taken, writing, without seal, is a bond.
10. Acts continued in force, and acts repealed by the code.
11. Section 10 not to apply to acts of the session of 1851–2.
12. Code not to affect actions commenced before its adoption.
13. When time is prescribed by law, how computed.
14. Code not to bar prosecutions for offences committed before its adoption, or for penalties or forfeitures incurred.

§ 1. Words used in this code, in the past or present tense, include the future as well as the past and present. Words used in the masculine gender include the feminine and neuter; the singular includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; "writing" includes printing on paper; "oath" includes affirmation; "signature" or "subscription" includes mark when the person cannot write, his name being written near it and witnessed by a person who writes his own name as a witness. The terms "lunatic," "insane," or "non compos mentis," include all persons of unsound mind.

Tense. Gender. Number. Person. Writing. Oath. Signature. Subscription. Lunatic. Insane, &c.

§ 2. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

Property. 1. The word "property" includes property real and personal.

Real property. 2. The words "real property," are co-extensive with lands, tenements, and hereditaments.

Personal property. 3. The words "personal property," include money, goods, chattels, things in action, and evidences of debt, deeds and conveyances. The word "circuit," means judicial circuit.

Negro. Mulatto or "person of color." 4. The term "negro," within the meaning of this code, includes mulatto. The term "mulatto," or "person of color," within the meaning of this code, is a person of mixed blood, descended, on the part of the father or mother, from negro ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person.

Joint authority. § 3. All words giving a joint authority to three or more persons, or officers, give such authority to a majority of such persons, or officers, unless it is otherwise declared.

Justice. § 4. The word "justice," when applied to a magistrate, means justice of the peace.

Preceding. § 5. "Preceding," and "following," mean next before, and next after.

State. § 6. The word "state," when applied to the different parts of the United States, includes the District of Columbia, and the several territories of the United States.

United States. § 7. The words "United States," include the territories thereof, and the District of Columbia.

Month. Year. § 8. The word "month" means a calendar month, and the word "year," a calendar year, unless otherwise expressed.

Bond. § 9. When by law a bond is required, an undertaking without seal is sufficient, and must be taken in all respects as if the same was a sealed instrument.

Acts continued in force. § 10. All special acts, or joint resolutions of the general assembly of the state of Alabama, now in force, incorporating companies for banking or manufacturing purposes, for the purpose of making roads, canals, or bridges, or for marine, or fire insurance, or for any other purpose; the incorporation of towns, masonic lodges, schools, medical associations, and colleges; and all acts relating to the boundaries of counties; all acts for loans or donations of the two and three per cent. funds to private companies; all acts relating to the State Bank and branches, or for the liquidation and settlement thereof; all acts for the disposition and liquidation of the state bonds; all acts relating to the building of the state capitol at Montgomery, and to the preservation and safe keeping of the public buildings and furniture at Tuskaloosa; all acts for the liquidation and settlement of the Planters and Merchants' Bank; and all acts authorizing settlements with the United States for claims of the state against it; all acts providing for claims by this state against the general government; all acts creating the city court of Mobile, and in relation thereto; all laws relating to the militia, not herein retained, and to the military organization of the state; all laws of a local nature, operating in particular counties, or of a private nature, operating on particular persons, are hereby

continued in force; and all acts of a public nature, designed to operate on all the people of the state, not embraced in this code, are hereby repealed. Acts repealed.

§ 11. The provisions of the preceding section do not apply to any public or general laws passed at the session of the general assembly convened on the second Monday of November, 1851, but such laws supersede any provision of this code with which they may conflict. Laws of the session of 1851-2, excepted.

§ 12. No action or proceeding commenced before the adoption of this code is affected by its provisions. Actions commenced before adoption of code.

§ 13. The time within which any act is provided by law to be done, must be computed by excluding the first day, and including the last; if the last day is Sunday, it must also be excluded. Time, how computed.

§ 14. Neither the adoption of this code, nor any provision therein contained, has the effect to release any person from any penalty or forfeiture which has accrued previous to the adoption thereof; or to release any person from trial or punishment, for any crime, misdemeanor, or offence heretofore committed against the laws of this state; but all such laws are hereby continued in force as to such crimes, misdemeanors, offences, penalty or forfeiture, in the same manner, and to the same effect, as if this code had contained no repealing clause. Offences committed before adoption of code.

Title 2.

THE POLITICAL ORGANIZATION OF THE STATE.

CHAP. 1. The bouudaries, sovereignty, and jurisdiction of the state.
2. Political divisions of the state.

CHAPTER I.

THE BOUNDARIES, SOVEREIGNTY, AND JURISDICTION OF THE STATE.

ARTICLE 1. The boundaries of the state.
" 2. The sovereignty and jurisdiction of the state.
" 3. Cessions to and from the United States.

ARTICLE I.

The Boundaries of the State.

SEC.
15. Boundaries defined by act of admission.
SEC.
16. Between Alabama and Georgia.
17. Between Alabama and Florida.

§ 15. The boundaries of the state of Alabama, as defined by the act of Congress, making provision for her admission General boundary of the state.

into the Union, and as declared by the preamble to the constitution accepting such boundaries, are as follows: beginning at the point where the twenty-first degree of north latitude intersects the Perdido river; thence east to the western boundary line of the state of Georgia; thence along such line to the southern boundary line of the state of Tennessee; thence west, along such boundary line, to the Tennessee river; thence up the same, to the mouth of Bear creek; thence by a direct line to the north-west corner of Washington county; thence due south to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the same to the beginning; subject to such alteration as is provided in the third section of such act, and subject to such enlargement as may be made by law, in consequence of any cession of territory by the United States, or either of them.

Between Alabama and Georgia.

§ 16. The boundary line between Alabama and Georgia commences on the west side of the Chattahoochee river, at the point where it enters the state of Florida; from thence up the river, along the low water mark, on the western side thereof, to the point on Miller's bend, next above the place where the Uchee creek empties into such river; thence in a direct line to Nickajack.

Between Alabama and Florida.

§ 17. The boundary line between Alabama and Florida is the line commonly known as the "mound line," or "Ellicott's line," as distinguished from a blazed line, known as the "upper" or "Coffee" line; commencing at a point on the Chattahoochee river near a place known as "Irwin's Mills," and from thence to the Perdido river, marked to the whole distance by blazes on the trees, and by mounds of earth, at distances of about one mile.

ARTICLE II.

The Sovereignty and Jurisdiction of the State.

SEC.
18. Extends over its whole territorial limits.
19. Governor and officers to maintain and defend.
SEC.
20. When counsel appointed to defend—by whom.

Sovereignty and jurisdiction of the state.

§ 18. The sovereignty and jurisdiction of the state extends to all places within the boundaries thereof; but the extent of such jurisdiction over places that have been or may be ceded to the United States, is qualified by the terms of such cession, as hereinafter provided for.

How maintained.

§ 19. It is the duty of the governor, and all the subordinate officers of the state, to maintain and defend its authority and jurisdiction.

§ 20. When any suit is instituted against any person deriving title from the state, to recover any lands within the limits of the same, under pretence of any claim inconsistent with its sovereignty and jurisdiction, the governor, at the expense of the state, must employ counsel, and provide for the defense of such suit. Governor to employ counsel to defend.

ARTICLE III.

Cessions to the United States.

SEC.
21. United States may acquire lands for certain purposes, &c.
22. Value of lands acquired, how determined, &c.
23. Governor to cede jurisdiction to United States—restrictions.

§ 21. The United States may acquire and hold lands within the limits of this state, as sites for forts, magazines, arsenals, dockyards, and other needful buildings, or either of them, as contemplated and provided by the constitution of the United States, which purchase may be by contract with the owners, or as hereinafter provided for. The United States may acquire lands.

§ 22. If the agent of the United States and the owner of such lands cannot agree as to the sale and purchase thereof, the chancery court of the district in which such lands lie may, on the application of such agent, ascertain the value of such lands, and decree a conveyance thereof, as follows: Value of the land, how determined.

1. Reasonable notice of such application must be given to the owners of such land, by personal service.

2. The value of such lands must be ascertained by a jury summoned for that purpose, under the direction of the chancellor, or by any three persons agreed on by the parties, which jury, or persons, must be first sworn, faithfully and impartially to determine such value.

3. Upon ascertaining the value of such lands, upon evidence or inspection of the same, by such persons appointed, or by the jury under the direction of the chancellor, he must, on the payment of such value to the owner, or into court for his use, and the payment of all costs and expenses of the proceedings, direct a conveyance of such lands, by a certain time specified in such decree, to the United States for such purposes; and on failure to execute such conveyance within the time specified in such decree, the decree operates as a conveyance.

§ 23. The governor, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of the purchase, describing the lands sought to be ceded, is authorized on the part of the state, to cede to the United States jurisdiction over such lands, to hold, use, and occupy the same for the purposes of the cession, and none other. The jurisdiction thus Governor to cede jurisdiction.

Restriction.

ceded does not prevent the execution on such lands of any process, civil or criminal, under the authority of this state; nor prevent the laws of this state from operating over such lands; saving to the United States security to their property within the limits of the jurisdiction ceded, and exemption of the same, and of such lands, from taxation, under the authority of this state during the jurisdiction ceded.

CHAPTER II.

POLITICAL DIVISIONS OF THE STATE.

ARTICLE 1. Counties.
" 2. Senatorial Districts.
" 3. Congressional Districts.

ARTICLE I.

Counties.

SEC.
24. Their jurisdiction over navigable streams.
25. Number of counties and their names.
SEC.
26. Apportionment of representatives among the counties.

Navigable streams.

§ 24. The jurisdiction over navigable streams, not included in the limits of any county, belongs to the county or counties whose jurisdiction extends to the margin thereof, and all process may be executed on such stream by officers of either county.

Number and names of the counties.

§ 25. The state is divided into fifty-two counties; called Autauga, Baldwin, Barbour, Benton, Bibb, Blount, Butler, Chambers, Cherokee, Choctaw, Clarke, Coffee, Conecuh, Coosa, Covington, Dale, Dallas, DeKalb, Fayette, Franklin, Greene, Hancock, Henry, Jackson, Jefferson, Lauderdale, Lawrence, Limestone, Lowndes, Madison, Macon, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuskaloosa, Walker, Washington and Wilcox.

Apportionment of representatives among counties.

§ 26. Representatives are apportioned among the counties as follows: The county of Mobile, four representatives; the counties of Barbour, Benton, Chambers, Cherokee, Franklin, Jackson, Macon, Pike, Talladega and Tallapoosa, three representatives each; the counties of Butler, Coosa, Dallas, DeKalb, Fayette, Greene, Henry, Lauderdale. Lawrence, Limestone, Lowndes, Madison, Marengo, Marshall, Montgomery, Bibb, Blount, Perry, Pickens, Randolph, Russell, Shelby, Sumter, Tuskaloosa and Wilcox, two representatives

each; the counties of Autauga, Baldwin, Clarke, Coffee, Choctaw, Conecuh, Covington, Dale, Monroe, Morgan, St. Clair, Hancock, Marion, Walker, Washington and Jefferson, one representative each.

ARTICLE II.

Senatorial Districts.

SEC.		SEC.	
27.	State divided into thirty-three senatorial districts.	30.	Returning officers to compare returns and give certificates of election.
28.	The returning officers of the districts.		
29.	Sheriffs of other counties to make returns to them.		

§ 27. For the election of senators to the General Assembly, the state is divided into senatorial districts, as follows:

Senatorial districts.

1st. Mobile.
2d. Baldwin, Monroe and Clarke.
3d. Coffee, Covington and Conecuh.
4th. Dale and Henry.
5th. Barbour.
6th. Pike.
7th. Russell.
8th. Macon.
9th. Montgomery and Autauga.
10th. Dallas and Wilcox.
11th. Sumter, Choctaw and Washington.
12th. Greene and Marengo.
13th. Perry and Bibb.
14th. Lowndes and Butler.
15th. Coosa.
16th. Tallapoosa.
17th. Chambers.
18th. Randolph.
19th. Talladega.
20th. Benton.
21st. Jefferson and Shelby.
22d. Tuskaloosa.
23d. Pickens.
24th. Marion and Fayette.
25th. Franklin.
26th. Lawrence, Hancock and Walker.
27th. Blount and St. Clair.
28th. Cherokee.
29th. Marshall and DeKalb.
30th. Jackson.
31st. Madison.
32d. Limestone and Morgan.
33d. Lauderdale.

Returning officers.

§ 28. The sheriffs of the counties of Monroe, Covington, Dale, Montgomery, Dallas, Choctaw, Marengo, Jefferson, Fayette, Hancock, St. Clair, Marshall, Limestone, Butler, and Perry, are the returning officers of the districts to which their counties belong.

Returns made to them.

§ 29. The sheriffs of the counties in each district must make to the returning officer of the district returns of the elections held in their counties for senators within ten days after such election.

Duties of returning officers.

§ 30. The returning officers of the senatorial districts must compare the returns made to them, and declare the election, make returns, and give certificates to the persons elected, as now provided by law, and when there is a tie, must give the casting vote.

ARTICLE III.

Congressional Districts.

SEC.
31. State divided into seven congressional districts. (See note.)

Seven congressional districts.

* § 31. For the election of representatives in congress of the United States, this state is divided into seven congressional districts, as follows: The congressional districts of the state remain as established by the act approved February thirteenth, 1843: the county of Choctaw constitutes a part of the fourth, and the county of Hancock a part of the fifth congressional districts, such counties voting separately, as other counties; and the sheriffs of the counties of Choctaw and Hancock must hold elections in their respective counties, and make returns of the same to the respective returning officers of their districts, as prescribed by the law of 1843; and all other provisions of said law shall be of force and effect

---

* The part of the act of 1843 referred to in section 31, necessary to show the counties embraced in the respective congressional districts, and the returning officers, is,—

"1st District is composed of the counties of Mobile, Washington, Baldwin, Clarke, Monroe, Conecuh, Butler, Wilcox and Marengo.

2d District—Covington, Dale, Henry, Coffee, Pike, Barbour, Macon, Montgomery and Russell.

3d District—Dallas, Lowndes, Autauga, Perry, Bibb, Jefferson, Shelby and Coosa.

4th District—Greene, Sumter, Pickens, Tuskaloosa and Fayette.

5th District—Limestone, Lauderdale, Franklin, Lawrence, Morgan, Marion and Walker.

6th District—Madison, Jackson, Marshall, DeKalb, Blount and St. Clair.

7th District—Cherokee, Benton, Talladega, Randolph, Chambers and Tallapoosa.

The sheriffs of the counties of Clarke, Pike, Bibb, Tuskaloosa, Lawrence, Marshall and Talladega, are the returning officers of their respective congressional districts, and the sheriffs of the other counties in their districts must make returns to the returning officers above mentioned.

in the counties of Choctaw and Hancock; and this act shall cease to exist as a law from and after the first day of March, 1854.

Title 3.

THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS.

CHAP. 1. The legislative department.
2. The executive department.

CHAPTER I.

THE LEGISLATIVE DEPARTMENT.

ARTICLE 1. Of the general assembly.
" 2. Subordinate officers of the general assembly.

ARTICLE I.

Of the General Assembly.

SEC.
32. Regular sessions biennially.
33. Elections by general assembly, how conducted.
34. Committee of each house appointed to examine the offices of the comptroller and treasurer.
35. Duty of such committees.
36. To report to their respective houses.
SEC.
37. Examination and report to be made in the first month of the session.
38. Papers of each house delivered to secretary of state at the close of the session.

Regular sessions.

§ 32. Regular sessions of the general assembly are held on the second Monday in November, 1853, and every two years thereafter.

Elections by general assembly.

§ 33. All elections by the General Assembly are to be conducted as follows:

1. On the day and hour appointed for the election, the members of both houses must assemble in the representative hall.

2. The names of the members of each house are to be called by their respective clerks, each member voting viva voce as his name is called.

3. The result must then be ascertained by the president of the senate and speaker of the house, and announced by the last named officer.

4. The votes are to be given for but one election, at the same time, and a majority of the whole number of votes given are necessary to a choice.

Committee to examine

§ 34. During the first week of each regular session of the general assembly, the presiding officers must appoint a com-

comptroller's and treasurer's office.

mittee of three members of each house, jointly to examine the offices of comptroller and treasurer.

Duty of committee.

§ 35. It is the duty of such committee to examine the accounts and vouchers of such officers, as to all moneys received into and paid out of the treasury during the two preceding fiscal years; to compare the warrants drawn by the comptroller during that period with the several laws by authority of which they purport to be drawn; to examine into the other accounts and books of such offices, and to count the money on hand at the time of the examination.

Report of the committee.

§ 36. Such committee must report to their respective houses the amount of money received into and paid out of the treasury during the two preceding fiscal years, on warrants drawn by the comptroller; if such comptroller was authorized by law to draw such warrants; specifying such as in their opinion were drawn without authority, and their reasons therefor; the time when the treasurer in office entered on his duties, and the amount of money received by him up to the time of such examination; the balance in the treasury on the first day of November preceding, and at the time of such examination; the condition of such offices, and the correctness of all books and accounts required by law to be kept therein.

When made.

§ 37. Such examination and report must be made during the first month of the session.

Papers of the General Assembly, where deposited.

§ 38. At the close of each session, the secretary of the senate, clerk of the house of representatives, and secretary of state, must select all the papers belonging to the general assembly, except such as relate to the unfinished business, and deposit them in the office of the secretary of state.

Engrossed laws and joint resolutions.

§ 39. The engrossed copies of all laws and joint resolutions passed by the general assembly must be preserved by the chairman of the enrolling committee, and deposited in the office of the secretary of state.

Relating to unfinished business, how filed and arranged.

§ 40. The secretary of the senate and clerk of the house of representatives must, within ten days after the adjournment of each session, assort all the papers and documents of their respective houses, relating to the unfinished business of the session, and arrange them in files, as follows:

1. All petitions, with the accompanying documents, to be arranged and filed in alphabetical order, tied up in convenient packages, with a label on each, showing the character of the documents, and the session to which they relate.

2. All bills rejected on the first reading must be arranged, filed, and labelled in like order; and so of bills rejected on the second and third reading; the labels in each case showing on what reading the bills were rejected.

3. All communications from the governor, comptroller, treasurer, or other officer, or person, which have been received during the session, and not entered at length on the journals, must be arranged, filed, and labelled in separate

packages, showing from what department, officer, or person, the same were received.

4. Reports from standing and select committees must be arranged, filed, and labelled in like manner.

5. Any other papers, or documents, not included under either of the foregoing heads, must be arranged, filed, and labelled, as miscellaneous papers; the label showing the session to which they belong, and, as near as practicable, the character of the papers; and, in every instance, to which branch of the general assembly they belong.

When delivered, secretary to give receipt.

§ 41. The records, papers, and documents, thus arranged, filed, and labelled, must be delivered to the secretary of state, who, upon receipt of the same, must certify that such secretary and clerk have respectively complied with the requisitions of the preceding section; and no warrant must be drawn by the comptroller, and no money paid by the treasurer, for such services, without the production of such certificate, which must be kept by the treasurer as a voucher.

Oath of members.

§ 42. The oaths of office may be administered to the members of the general assembly by any judge of the supreme or circuit court, judge of probate, or justice of the peace; and the president of the senate and speaker of the house may be sworn in by any members of their respective bodies.

Pay and mileage.

§ 43. The president of the senate and speaker of the house receive six dollars, and the other members four dollars for each day's attendance; and are allowed four dollars for every twenty miles travelling to and from the general assembly; estimating the distance by the direct mail route, if any, and if not, by the land route usually travelled.

In case of sickness.

§ 44. If any member is detained by sickness, after leaving home, in coming to, or is unable to attend the house after he arrives at the seat of government, he is entitled to the same daily pay as an attending member.

Compensation, how certified.

§ 45. The compensation due to the members and officers of the general assembly must be certified by the president and speaker, respectively, to the comptroller of public accounts, who must issue his warrant therefor on the state treasury.

ARTICLE II.

Subordinate Officers of the General Assembly.

SEC.
46. The president of the senate and speaker of the house to administer oath to the subordinate officers.
47. Assistant secretaries and clerks only employed by resolution of house and senate.
48. Pay of officers of house and senate.
49. Their compensation to be certified by the speaker of the house or president of the senate.

Oaths of officers of Assembly.

§ 46. The president of the senate and speaker of the house

are to administer the oaths required to the subordinate officers of their respective houses.

Assistant clerks and secretaries.

§ 47. No assistant clerk must be employed by the secretary of the senate, or clerk of the house, without authority by a resolution of their respective houses.

Pay of officers.

§ 48. The secretary of the senate and clerk of the house are each allowed seven dollars a day; the assistant clerks of each house, five dollars a day each, and the door keepers, one for each house, four dollars a day each.

How certified.

§ 49. The compensation due to the subordinate officers of each house, under the preceding section, must be certified by the president and speaker, respectively, to the comptroller, who issues his warrant therefor.

CHAPTER II.

THE EXECUTIVE DEPARTMENT.

ARTICLE 1. The governor.
" 2. The secretary of state.
" 3. The comptroller.
" 4. The treasurer.
" 5. The attorney general.

ARTICLE I.

The Governor.

SEC.
50. Governor to assign offices in the capital to the executive officers, and appropriate the other rooms to the use of the state.
51. He may employ a private secretary.
SEC.
52. He may appoint commissioners in other states.
53. His oath, by whom and when administered.
54. His salary.

Rooms in the capital for officers.

§ 50. The governor must assign rooms in the capitol to the secretary of state, comptroller, treasurer, and in the absence of any legislative provision, designate the purposes to which other rooms are to be applied.

Private secretary; salary.

§ 51. He may employ a private secretary at a yearly salary not exceeding three hundred and fifty dollars, which is paid quarterly out of the treasury on the warrant of the comptroller.

Commissioners in other states.

§ 52. He may appoint commissioners in the other states and territories of the United States, to take and certify depositions, to receive the acknowledgment, and take the proof of conveyances of property within this state, and the proof of wills executed by persons without the state, devising or bequeathing property within the state.

Oath of governor.

§ 53. The oath required by the first section of the sixth article of the constitution of this state, is administered by

the speaker of the house of representatives to the governor, in presence of both houses of the general assembly.

§ 54. The salary of the governor is two thousand five hundred dollars. Salary.

ARTICLE II.

Secretary of State.

Sec.	Sec.
55. His office hours.	57. His salary.
56. His duties.	58. His fees.

§ 55. The secretary of state must keep his office open for the transaction of business, unless prevented by sickness, from ten in the morning until one in the afternoon, on every day in the year except Sunday, the fourth of July, and Christmas. Office hours.

§ 56. It is the duty of the secretary of state: Duties.

1. To keep the state seal, the original statutes, and public records of the state, the records and papers belonging to the general assembly, keeping the papers of each house separate. State seal. Statutes, &c.

2. To attest commissions, pardons, and all other public documents from the executive of the state, and when necessary affix the seal of the state thereto, and certify the same in his official capacity. Attest public documents.

3. To record in books proper for that purpose all grants and patents issued by the state. Record patents, &c.

4. To keep all books, maps, and other papers appertaining to the survey of any lands belonging to the state, and the books and papers belonging to the land office at Courtland. Books, &c., relating to lands, &c.

5. To certify, on application, and the payment of his lawful fees, copies of all records, grants, papers, and laws of the several states, or of the United States. Certify copies.

6. To supply the books and stationary for the general assembly, the executive, judges of the supreme court, and the several departments of state, for which the comptroller must, on his certificate, issue his warrant on the treasury. Stationary for general assembly, supreme court, and departments.

7. At least thirty days before the meeting of the general assembly, to contract at the lowest practicable price for the hire of the requisite number of servants to attend upon both houses during the session, and for fuel, lights, and whatever else the general assembly will necessarily require during the session; and to report such contracts to the committee on accounts in each house during the first week of the session. Contract for fuel, lights, and servants for general assembly.

8. On the adjournment of each session, to take charge of the unoccupied rooms in the capitol, and provide that the same be ventilated and kept secure until the next meeting of the general assembly. Keep capitol secure.

9. To give notice to the solicitors of the respective circuits of all officers who fail to file their bonds in his office, or make returns of elections within the time prescribed. Notify solicitors of neglect to file bonds, &c.

10. To perform such other duties as he is or may be required by law.

Salary.

§ 57. The annual salary of the secretary of state is twelve hundred dollars.

Fees.

§ 58. He is also entitled to the following fees, in addition to his salary: For issuing any patent, and affixing the seal of the state thereto, fifty cents; for certifying any law, or paper kept in his office, fifteen cents for every hundred words, and at that rate; for each annexation of the state seal, other than patents, fifty cents, to be paid by the person requiring the same for private or personal use; but no fees must be charged in any matter in which the state, or any county or township thereof is interested.

ARTICLE III.

Comptroller of Public Accounts.

Sec.		Sec.	
59.	Must give bond before entering on the duties of his office.	62.	Must certify copies of papers in his office.
60.	His office hours.	63.	His salary and fees.
61.	His seal and device.	64.	His office under the superintendence of the governor.

Bond.

§ 59. The comptroller of public accounts must, before entering on the duties of his office, give bond in the sum of twenty thousand dollars, which bond must be approved of by the governor, and filed and recorded in the office of the secretary of state.

Office hours.

§ 60. He must keep his office open for the transaction of business, unless prevented by sickness, from ten in the morning until one in the afternoon, on every day except Sunday, the fourth of July, and Christmas.

Seal.

§ 61. He must keep a seal of office, with the device, "The state of Alabama, Comptroller's Office."

To certify copies, &c.

§ 62. He must certify under his official seal, at all times, when necessary for the public use, and on application, and payment of his legal fees therefor, for private or personal use, copies of any paper required to be kept in his office.

Salary and fees.

§ 63. The salary of the comptroller is two thousand dollars, and he is entitled to fifty cents for each annexation of his official seal for private or personal use; and for other services, the same fees as the secretary of state for similar services.

Office under superintendence of governor.

§ 64. The office of the comptroller is under the general superintendence of the governor, who may at any time appoint a competent person to examine into the condition of the same, and report to him; such person to be paid by the warrant of the comptroller, on the certificate of the governor, not exceeding four dollars a day.

ARTICLE IV.

State Treasurer.

SEC.
65. To give bond before entering on the duties of his office.
66. His office hours.
67. On resignation or removal to settle his account with his successor, and deliver him the books, papers and money of the office.
68. In case of his death or failure to settle his account with his successor, or removal or resignation, the comptroller must state his account, and deliver the books, papers and money of the office to his successor.
69. The governor has a general superintendence of his office.
70. His salary.

His bond.

§ 65. The state treasurer must, before entering on the duties of his office, give bond in the sum of two hundred and fifty thousand dollars, with two or more sufficient securities, to be approved by the governor, and filed, recorded and kept in the office of secretary of state.

Office hours.

§ 66. He must keep the office open for the transaction of business, unless prevented by sickness, from ten in the morning until one in the afternoon on every day except Sunday, the fourth of July, and Christmas.

On removal or resignation account to be settled with his successor and books and money given up to him.

§ 67. If the state treasurer resign or be removed, he must, within ten days after such resignation or removal, state his account, and deliver the books, papers and money belonging to the treasury to his successor, taking his receipt therefor, and the comptroller must record and file in his office a statement of such settlement and receipt, and report the same to the next session of the general assembly.

In case of his death or neglect or refusal to settle with successor.

§ 68. If the treasurer, in the event of his resignation or removal, within ten days thereafter, fail to comply with the provisions of the preceding section, or if he dies, the comptroller, after giving ten days' notice by publication in some paper at the seat of government, must proceed, in the presence of any person attending on the part of such late treasurer, to state his account, and deliver the books, papers and money belonging to the treasury to his successor, taking his receipt for the same, to record and file such receipt and statement, and report the same to the next session of the general assembly.

Governor has superintendence of his office.

§ 69. The governor exercises a general superintendence over the office of state treasurer, and may appoint a competent person to examine into the state of such office for any period he may designate, and report its condition to him; such person to be paid not exceeding four dollars a day, by the warrant of the comptroller, on the certificate of the governor.

His salary.

§ 70. The annual salary of the state treasurer is twelve hundred and fifty dollars.*

* Increased by acts of 1851–2 to $1500.

ARTICLE V.

Attorney General.

SEC.
71. Gives bond before entering on the duties of his office.
72. To keep an office at the seat of government. It is his duty to give legal advice to the officers of the executive departments, and to appear for the state in all suits in the supreme court.
73. His salary.

His bond.

§ 71. The attorney general, before entering on the duties of his office, must give bond in the sum of ten thousand dollars, and, upon the requisition of the governor, must give additional bond whenever the public interest demands; which bonds must be approved by the governor, and filed and recorded in the office of the secretary of state.

Office at the seat of government.

§ 72. He must keep his office at the seat of government.

Duties.

It is the duty of the attorney general:

1. To give his opinion, in writing or otherwise, on any question of law connected with the interests of the state or with the duties of any of the departments when required by the governor, secretary of state, comptroller, or treasurer.

2. On the application of the governor, to prepare all contracts and writings in relation to any matter in which the state is interested.

3. To attend, on the part of the state, to all criminal causes depending in the supreme court, and to all civil causes to which the state is a party.

4. To perform such other duties as are, or may be by law required of him.

Salary.

§ 73. His annual salary is four hundred and twenty-five dollars.

Title 4.

PUBLIC PRINTING, DISTRIBUTION OF THE LAWS AND JOURNALS OF THIS STATE, LAWS OF THE UNITED STATES, AND OTHER PUBLIC DOCUMENTS.

CHAP. 1. Public printing.
2. Distribution of the laws and journals of this State, laws of the United States, and other public documents.

CHAPTER I.

PUBLIC PRINTING.

SEC.
74. Secretary of state after each session must prepare copies of the laws and joint resolutions and of the journal of each house for printing.

SEC.
75. Laws to be divided into public or general and private or local.
76. The journals must be prepared with title pages and index.
77. When to be delivered to state printer.
78. Style of printing and quality of paper.
79. Copies of the revenue laws also printed separately.
80. Style of printing done for general assembly.
81. Blanks for executive and state departments.
82. Parchments furnished by the state.
83. Laws and journals, when to be completed by printer.
84. State printer must do the printing required by the general assembly, and for the executive and state departments.
85. Secretary of state to advertise for proposals for the public printing before each session.
SEC.
86. What the proposals must state.
87. When and by whom opened and acted on.
88. Proposals not accepted if above a certain rate.
89. The lowest bidder within the prescribed rates to be the public printer.
90. His bond must be kept in the office of secretary of state.
91. Payment for printing done for general assembly or executive or state officers, how made.
92. Payment for the laws and journals, when made.
93. For separate revenue laws.
94. If no proposal is made within the prescribed rate, secretary of state to contract for the public printing.
95. Public printing to be done at the seat of government.

Acts and resolutions prepared for printing.

§ 74. The secretary of state must, after each session of the general assembly, prepare for publication fair copies of the acts and joint resolutions of the general assembly, and the journals of each house.

Public and general. Private or local.

§ 75. The acts and joint resolutions must be arranged in two divisions; the first containing those of a public or general character, the second, those which are private or local; there must also be a title page; marginal notes to each section, stating its substance; and a full index for each division.

Journals, how prepared.

§ 76. The journals must be prepared with a title page, and indexed.

When delivered to state printer.

§ 77. The copies of the acts and joint resolutions thus arranged, with title page, marginal notes, and index, must be delivered to the state printer, by the secretary of state, with his certificate, that he has compared such copies with the original acts, and joint resolutions, within ten days, and with copies of the journals of each house, within twenty-five days, after the adjournment of the general assembly.

How printed as to paper, type, &c.

§ 78. The acts, resolutions, and journals must be printed on paper, weighing at least forty pounds to the ream, double medium, of royal octavo pages, with type of the denomination of small pica; and the marginal notes with minion; each page must contain not less than forty-five, or more than fifty lines; the heads, or titles, of the index, in capitals; the other part in small pica; the whole to correspond in print, and execution, with the published copies of the acts and resolutions, and journals of the session of the general assembly, held on the second Monday in November, eighteen hundred and forty-nine.

Revenue laws also printed separately.

§ 79. The revenue laws passed at each session, are not only to be printed in the acts and resolutions, but to be

separately prepared for publication, as provided for by the 10th subdivision of section 365; and two hundred copies printed on the same paper, of the same size, and with the same type as the acts.

Style of printing for general assembly.

§ 80. The printing for the general assembly, while in session, is to be executed as follows: All bills must be printed on foolscap paper, on English type, not more than twenty-four lines to a page, with one inch margin; rule, or table work, in royal octavo, when it can be brought into that size, in any type not smaller than brevier; and when it cannot, then so as to fold conveniently into the volume, or pamphlet; all other printing on small pica type, in pages of the same size as those of the acts of eighteen hundred and forty-nine.

Blanks for executive and state departments.

§ 81. The blanks for the executive and state departments, except parchments, are to be printed on good paper, of such size, and on such type, as the proper officer may direct.

Parchments.

§ 82. For all printing on parchments, for the executive, or state offices, the parchments are to be furnished by the state, and the printing done on such type as the proper officer directs.

State printer to print the acts and journals. When.

§ 83. The state printer must, within sixty-five days after being furnished with copies of the acts and joint resolutions, print on paper, type, etc., as is herein provided, and deliver to the secretary of state twenty-two hundred copies of such acts and resolutions, marginal notes and index, stitched; and three hundred copies half bound, and lettered; and within thirty-five days thereafter, must deliver to such officer eight hundred printed copies of the journals, of each house, and index, stitched.

Does the printing for the general assembly.

§ 84. He must also do all the printing that may be ordered for either branch of the general assembly, when in session, and for the executive and state apartments during his term.

Proposals advertised for

§ 85. The secretary of state must, three months before each regular session of the general assembly, give notice, by publication in some paper published at the seat of government, that he will, for sixty days, receive sealed proposals for doing the public printing of the state, for the next two years.

What the proposals must state.

§ 86. The proposals must state:

1. The price per page at which the required number of the acts, journals, and revenue laws, will be delivered, on paper printed, stitched and bound, as herein provided for, and within the time herein prescribed.

2. The same in relation to the journals.

3. The price per quire of blanks, for the use of the executive and state offices.

4. The price per quire for blanks, on parchments, the parchments to be furnished by the state.

5. For the other printing, done by the order of either

house, the prices for the composition of each thousand ems of plain matter; for each thousand ems of figure work; for each thousand ems of rule and figure work; for each token of press work, common octavo forms; for each token of broadsides; for folding reports, bills, and other documents, for each thousand copies on each signature; distinct tables to be considered as signatures; for stitching reports, bills, and other documents, for each hundred copies.

6. The names of the securities he will offer.

When opened.

§ 87. At the expiration of sixty days from the date of publication, the secretary of state, in the presence of the governor, or on his failing to attend, in the presence of the comptroller, or treasurer, must open such proposals.

Above what rates proposals not to be accepted.

§ 88. No proposals must be accepted above the following prices: For each page of the acts and joint resolutions, binding the requisite number included, three dollars and eighty-five cents; for each page of the journals, and revenue laws, two dollars and eighty-five cents; for blanks printed on paper, per quire, one dollar; for blanks printed on parchments, per quire, one dollar and fifty cents; for the printing done for each house while in session, or for other printing, for the composition per thousand ems of plain matter, ninety cents; figure work per thousand ems, one dollar and twenty-five cents; rule and figure work, per thousand ems, one dollar and seventy-five cents; press work, including paper, per token, common octavo forms, two dollars; broadsides, per token, including paper, one dollar and twenty-five cents; folding reports, bills, and other documents, per hundred copies, on each signature, (distinct tables to be considered as signatures,) twenty cents; stitching of reports, bills, and other documents, per hundred copies, thirty-five cents.

Lowest bidder to be public printer for two years.

§ 89. The lowest bidder under the prices specified in the preceding section, on giving bond in the sum of ten thousand dollars, payable to the state of Alabama, to be approved by the governor, and conditioned so as to ensure the faithful execution of his duties, at the stipulated prices, shall be the public printer for the next two years.

Bond to be recorded, &c.

§ 90. The bond must be recorded, and kept in the office of the secretary of state.

Pay for printing for general assembly, or executive, or state offices, how made.

§ 91. For all printing done by the order of either house of the general assembly, or for the executive or state officers, the printer must procure a certified copy of such order from the secretary of the senate, clerk of the house, or from the officer ordering the work, upon the presentation of which to the comptroller, and the production of a copy of the work ordered, he must issue his warrant for the payment of the same according to the prices he has stipulated to perform such work.

Payment for printing laws and journals.

§ 92. Upon the delivery of the requisite number of the laws and journals, within the time prescribed, and executed in all respects as herein provided for, the secretary of state

must give his receipt for the same, upon which the comptroller must issue his warrant for the payment, at the price stipulated; but if the laws and journals are not delivered within the time fixed in this chapter, then the comptroller must deduct for each day's delay ten dollars from the amount due.

For revenue laws.

§ 93. Upon the delivery of the requisite number of the revenue laws, printed as herein provided for to the comptroller, he must issue his warrant for the payment.

If no proposal made, secretary of state to make contract.

§ 94. If no person proposes to do the public printing at the rates herein before specified, the secretary of state may procure the same to be done, at that rate, by private contract.

Where done.

§ 95. The public printing must be done at the seat of government.

CHAPTER II.

DISTRIBUTION OF THE LAWS AND JOURNALS OF THIS STATE, LAWS OF THF UNITED STATES, AND OTHER PUBLIC DOCUMENTS.

ARTICLE 1. Laws and journals of this state.
" 2 Laws of the United States and other public documents.

ARTICLE I.

Laws and journals of this State.

SEC.
96. The secretary of state distributes the acts and resolutions of each session.
97. Copies to be sent judges of probate, for certain officers in each county.
98. To retain fifty copies of the journals for the use of the state, and remainder distributed as laws.
99. Secretary of state to appoint agents for distribution.
100. Compensation of the agents, when and how made.

How distributed among state officers and officers of the United States and sister states.

§ 96. The sercetary of state must retain for the use of the executive offices, and the two houses of the general assembly, fifty copies of the acts and resolutions, of each session, and transmit to the department of state of the United States four copies; to the executive of each state, and territory, two copies, with the request to forward to the executive of this state the same number of copies of the laws of such state, or territory; and distribute to the comptroller, state treasurer, judges of the supreme and circuit courts, chancellors, judges of the city court of Mobile, attorney general, solicitors, clerk of supreme court, adjutant general, and quartermaster general, secretary of the senate, and clerk of the house, one copy each.

Copies sent to probate judges.

§ 97. He must also transmit to the judges of probate of each county, for such judge; each member of the general assembly; clerk of any court of record; sheriff; register in chancery; and each justice of the peace within his county, one copy each.

Journals retained for state; others distributed.

§ 98. He must retain fifty copies of the journals of each house for the use of the executive offices, and members of the general assembly, and must distribute to the state officers designated in section 96, one copy each; the remaining copies must be transmitted to the judges of probate of the several counties, in proportion to their population, to be by them distributed among the civil officers of their counties.

Agents to distribute laws and journals.

§ 99. For the purposes of distribution, the secretary of state must divide the state into four districts, and may appoint one agent in each district, to deliver to the judges of probate the acts and journals as provided for in this article; such agents giving bond in such amounts as the secretary of state directs, payable to the state, and conditioned to deliver the acts and journals to the several judges of probate, in their respective districts, within thirty days after they are received from the secretary of state, which bonds are to be approved by him, and kept in his office.

Agents' pay.

§ 100. Such agents are to be paid by the warrant of the comptroller, on the state treasurer, the amount stipulated, on the certificate of the secretary of state, to be given by the production by such agent of the receipt of the several judges of probate in his district, or if the office is vacant, or such judge absent, of the receipt of the clerk of the circuit court, for the number of acts and journals forwarded.

ARTICLE II.

Laws of the United States, and other public documents.

SEC.
101. Governor to provide a copy of the acts of each session of congress for each judge of probate.
102. Books and papers in relation to public lands after retaining copies for certain officers, to be distributed among judges of probate.
SEC.
103. Acts of congress to be sent by mail.
104. Other books and documents distributed with the laws and journals.

Acts of congress for judges of probate.

§ 101. The governor must obtain a sufficient number of the copies of the acts of each subsequent session of congress, to furnish one copy to the office of each judge of probate, for the use of the citizens of his county.

Documents relating to public lands.

§ 102. Books and documents, in relation to the public lands, after retaining one copy for the use of the executive and state departments, and one for the supreme court library, are to be distributed, by the secretary of state, among

the judges of probate, for the use of the citizens of their respective counties.

Acts of congress, how sent to judge of probate.

§ 103. The acts of congress are to be sent by mail to each of the probate judges, and the postage paid by warrant of the comptroller, on requisition of the secretary of state, out of the contingent fund.

Other documents.

§ 104. The other books and documents are to be distributed with the acts and journals.

Title 5.

OFFICES AND OFFICERS.

CHAPTER I.

OFFICES AND OFFICERS.

ARTICLE 1. Of persons ineligible to office; vacating office; residence, and commissions.
" 2. Oaths of office.
" 3. Official bonds.
" 4. Of requiring certain public officers to give additional security in certain cases.
" 5. Of the discharge of securities on official bonds, in certain cases.
" 6. Of proceedings to compel the delivery of books, papers, property and money by public officers to their successors.
" 7. Vacating office, death, resignation, removal, salary.

ARTICLE I.

Of persons ineligible to office; vacating office; residence, and commissions.

SEC.
105. Persons ineligible to office, who are:
1. Not white, or of lawful age.
2. Not inhabitants within the meaning of the law.
3. Convicts of certain crimes.
4. Disqualified by connection with duel or challenge.
5. Public defaulters.
6. Engaged at service in the army or navy.
7. Members of congress, and officers of the United States or another state.
106. Misdemeanor, for one ineligible to assume office.
107. Sentence of officer to penitentiary vacates office.
108. Officers to reside in the state, and keep their offices where required by law.
109. Certain officers commissioned.

Persons ineligible to office.

§ 105. The persons who are ineligible to, and disqualified from holding office under the authority of this state, are:

1. Those who are not free white male persons, of the age of twenty-one years.

2. Those who have not been inhabitants of the state, coun-

ty, district, or circuit, the period required by the constitution and laws of this state.

3. Those who have been convicted of offering, or giving a bribe, larceny, or any other offence except manslaughter, punishable by confinement in the penitentiary, unless they have been pardoned, and restored, by such pardon, to all the rights of citizenship.

4. Those who have in this state, or in any other of the United States, given, accepted, or knowingly carried a challenge to fight with deadly weapons.

5. Those against whom there is a judgment unpaid, for any moneys received by them, in any official capacity, due to the United States, this state, or any county thereof.

6. Soldiers, seamen, or marines, in the regular army, or navy, of the United States.

7. Members of congress, and persons holding any office of profit, or trust, under any foreign power, either of the states of this union, or under the United States, other than the office of postmaster.

Penalty for violating this law.

§ 106. Any person taking upon himself in this state any office, by election, or appointment, being under either of the disqualifications in the preceding section specfied, is guilty of a misdemeanor, and on conviction must be fined, not less than one hundred dollars.

Sentence to penitentiary, vacates office

§ 107. When any person holding any office, or place, under the authority of this state, is sentenced by any court of the United States, in this state, or any other state, to imprisonment in the penitentiary, his office, or place, is vacated, from the time of the sentence, and if the judgment is reversed, he must be restored; but if pardoned, he must not.

Officer must reside in the state.

§ 108. All officers must reside in this state, and keep their offices at such places as are or may be designated by law.

Commissioned officers.

§ 109. The following officers are to be commissioned, namely: senators and representatives in congress; judges of the several courts; the attorney general; solicitors; clerks of the circuit and superior courts; sheriffs; justices of the peace; the secretary of state; comptroller; and state treasurer.

ARTICLE II.

Oaths of office.

SEC.
110. Oath in addition to the constitutional oath.
111. In cases not otherwise provided for, any one authorised to administer an oath, may administer the oath of office; manner of administering and certificate.
112. Oaths of officers not limited in their duties to a county, filed in the office of secretary of state.
SEC.
113. Of judges of probate.
114. Of officers whose duties are confined to a county.
115. To be endorsed by officer receiving them in office.
116. Oaths of deputies; how taken and filed.
117. Failure to take or file the oath is a misdemeanor.

Additional oath to the constitutional oath.

§ 110. In addition to the oath prescribed by the first section of the sixth article of the constitution, every public officer must swear that he has not, directly or indirectly, given, accepted, or knowingly carried a challenge in writing, or otherwise, to any person, being a citizen of this state, to fight with deadly weapons, either in or out of this state; or aided or abetted in the same, since he has been a citizen thereof, (or since the year eighteen hundred and twenty-six, if the person taking the oath become a citizen of the state since that time;) and that he will not, directly or indirectly, give, accept, or knowingly carry a challenge to any person being a citizen of this state, to fight with deadly weapons, either in or out of the state; or in any manner aid or abet the same, during his continuance in office.

By whom and how administered.

§ 111. In all cases in which it is not otherwise provided by law, the oaths of office may be administered by any officer authorized to administer an oath; must be written out, and subscribed by the person taking the same; and be accompanied with the certificate of the officer administering such oath, specifying the day and year on which the same were taken.

Oaths of state officers, where filed.

§ 112. Such oaths must, when taken by the governor, any judge of the supreme court, judge of the circuit court, chancellor, secretary of state, comptroller, state treasurer, attorney general, solicitor, or any other officer whose general duties are not limited to any one county, unless it is otherwise provided, be filed, with the certificate required by the preceding section, in the office of the secretary of state.

Judge of probate's oath; where filed.

§ 113. Judges of probate must file such oaths in the office of the clerk of the circuit court of their respective counties.

Oaths of county officers.

§ 114. Judges of other inferior courts, clerks of the circuit and inferior courts, sheriffs, tax collectors, county commissioners, justices of the peace, constables, and all other officers whose general duties are confined to a single county, must, unless it is otherwise provided, file such oaths and certificate in the office of the judge of probate of their respective counties.

To be endorsed with date of filing.

§ 115. The officer in whose office such oaths are required to be filed must endorse thereon the day and year on which the same were filed, which endorsement must be signed by him.

Oaths of deputies.

§ 116. Whenever any officer is authorised or required to appoint a deputy, such deputy before he proceeds to act must take the oath required by the first section of the fifth article of the constitution, which must be accompanied with the same certificate, filed in the same office and with the same endorsement thereon as the oaths of his principal; but the provisions of this section do not apply to any deputy who may be employed in particular cases only.

Failure to file oath; penalty.

§ 117. If any officer or deputy required by law to take and file such oaths, enters upon the duties of his office without first taking and filing the same in the proper office, he is guilty

of a misdemeanor, and on conviction must be fined not less than two hundred dollars.

ARTICLE III.

Official Bonds.

SEC.
118. Officers' bonds, payable to state of Alabama; sufficient security; condition.
119. Approval endorsed on bond, and its date, signed by approving officer.
120. Penalty for improperly approving bond.
121. Bonds required to be filed with the secretary of state or comptroller, to be filed in forty days.
122. In the office of clerk of circuit court, in twenty days.
123. In the office of judge of probate, within fifteen days.
124. In other cases in thirty days.
125. Failure to file bond as required vacates the office.
126. Bond not to be received on file unless endorsed.
127. Officer fined who enters on his office before filing bond.
128. Officer in whose office bond should be filed, to give notice to solicitor of the circuit at the first term of the circuit court of the county in which the officer resides; fined for neglect.
129. The date of filing bond to be endorsed on it at the time.
130. Legal effect of official bond on obligors; and rights of persons injured by neglect or improper conduct of officer.
131. They are not discharged by one recovery.
132. Obligation of bond improperly approved or filed, under which officer acts.
133. The provisions of this and the preceding article, apply also to offices hereafter to be established.

Official bonds; to whom payable; condition; securities.

§ 118. The bonds of all public officers required by law to give bond must, unless it is otherwise provided, be made payable to the State of Alabama, with such securities as the approving officer is satisfied are sufficient, and conditioned, in all cases in which a different condition is not prescribed, faithfully to discharge the duties of such office during the time he continues therein, or discharges any of the duties thereof.

Endorsed, with date of approval.

§ 119. The approval of all official bonds should be in writing, endorsed on the bond; should show the day and year on which the same were approved, and be signed by the approving officer.

Improperly approving bond; penalty.

§ 120. The bond of any public officer which is not in the penalty, payable, and conditioned, as prescribed by law, should not be approved; and the officer under such circumstances approving the same, not only neglects his duty, but subjects himself and his securities to an action by any person injured, and a recovery to the extent of such injury.

Time of filing bonds in the office of secretary of state or comptroller.

§ 121. The official bonds of public officers required by law to be filed in the office of comptroller or secretary of state, must be filed therein within forty days after the election or appointment of such officer.

In circuit clerk's office.

§ 122. Such bonds, when required to be filed in the office of the clerk of the circuit court, must be filed therein within twenty days after such election or appointment.

§ 123. Such bonds, when required to be filed in the office

In judge of probate's office.

of any judge of probate, must be filed therein within fifteen days after such election or appointment.

Other cases.

§ 124. In all other cases, such bonds must be filed in the proper office, within thirty days after such election or appointment.

Failure to file bond vacates office.

§ 125. If any officer of this state required by law to give bond, fails to file the same in the proper office within the time fixed by the four preceding sections, he vacates his office; and in such cases it is the duty of the officer in whose office such bond is required to be filed, at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases.

Bond not to be received on file unless properly approved.

§ 126. No officer with whom any official bond is required to be filed, must allow the same to be filed in his office unless the approval of the proper officer appear thereon, endorsed according to the provisions of section 119.

Fine for acting officially before filing bond.

§ 127. If any public officer required by law to give bond, performs any official act before his bond is approved and filed as required, he is guilty of a misdemeanor, and on conviction must be fined not less than five hundred dollars.

Notice to be given solicitor of failure to file bond.

§ 128. If any public officer required by law to give bond, fails to file the same within the time herein prescribed, in the proper office, notice of such failure must be given by the officer in whose office such bond is required to be filed, by or during the two first days of the session of the circuit court held in the county in which the officer so failing resides, next after such failure, to the solicitor of the circuit to which such county belongs; and any officer failing to give such notice is guilty of a misdemeanor, and on conviction must be fined not less than one hundred dollars.

Date of filing bond to be endorsed.

§ 129. Every officer in whose office the official bond of any public officer is filed, must endorse on such bond the day and year when the same was filed, and sign his name to such endorsement; and on failure so to do is guilty of a misdemeanor, and on conviction must be fined not less than fifty dollars.

Legal effect of official bond.

§ 130. Every official bond executed under this code, is obligatory on the principal and securities thereon:

1. For any breach of the condition during the time the officer continues in office, or discharges any of the duties thereof.

2. For the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein.

3. For the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office, as by his failure to perform, or the improper or neglectful performance, of those duties imposed by law.

Not discharged by single recovery.

§ 131. Such bonds are not discharged by a single recovery, but proceedings may from time to time be instituted thereon until the whole penalty is exhausted.

If officer acts under bond not properly executed, bond to be considered in place of the official bond.

§ 132. Whenever any officer required by law to give an official bond, acts under a bond which is not in the penalty, payable, and conditioned, as prescribed by law, such bond is not void, but stands in the place of the official bond, subject on its condition being broken to all the remedies which the person aggrieved might have maintained on the official bond of such officer, executed, approved and filed, according to law.

These articles apply to offices hereafter established.

§ 133. All the provisions of this and the preceding article, apply to the oaths of office and official bonds of all public officers of this state, whose office may be established hereafter, unless the contrary is expressly provided.

ARTICLE IV.

Of requiring certain public officers to give additional security in certain cases.

SEC.
134. The governor to require additional security of the comptroller and treasurer, when necessary.
135. Officers whose bonds approved by circuit judge, how and in what manner required to give additional security.
136. When bonds approved by judge of probate, how additional security required.
137. Requisition in writing, how served and what to specify.
138. At what time the additional bond must be given; failure to give it within ten days vacates the office.
139. Additional bond to be of same character as the first, and filed in same office.
140. Fine for failure to file additional bond.
141. Same legal effect as the first.
142. First bond not discharged, but remains in force.
143. The rights of the sureties among themselves.

Comptroller and treasurer.

§ 134. It is the duty of the governor to require additional bonds of the comptroller and treasurer, whenever in his opinion the interest of the state demands.

Additional security from officers whose bonds are approved by circuit judge; when required.

§ 135. Any judge of probate, clerk of the circuit court, or any other officer, whose official bond is required to be approved by a judge of the circuit court, must, upon the address of a majority of the grand jury of the county in which the duties of such office are exercised, made in term time to the presiding judge of the circuit court, or in vacation upon the address of any three members of the court of county commissioners to the judge of the circuit, be required by such presiding judge, or in vacation by the judge of the circuit, to give an additional bond.

Bonds approved by judge of probate.

§ 136. Any sheriff, coroner, justice of the peace, constable, assessor, tax collector, or any other officer, whose official bond is required to be approved by any judge of probate, must in like manner, upon the address of the grand jury of the county made in term time, or of three members of the court of county commissioners made in vacation, be required by such judge of probate to give an additional bond.

§ 137. The requisition to give additional bonds must in all

Requisition in writing and copy served.

cases be in writing, and signed by the officer making the same; must state the day and place, when and where the officer cited must appear and give such bond; and a copy of such requisition must be personally served on such officer before the day specified therein.

Additional bond, when to be given.

§ 138. Such officer must give such additional bond ten days after the day specified in such requisition, and failing so to do he vacates his office; and the officer making the requisition must at once certify the same to the appointing power, by whom the vacancy must be filled.

Penalty, &c., of additional bond.

§ 139. Such additional bonds must be in the same penalty, payable, conditioned, approved and filed in the same office, as the first official bond.

Failure to file it.

§ 140. If any officer giving such additional bond, fails to file it in the proper office, within ten days after the same is approved, he is guilty of a misdemeanor, and on conviction must be fined not less than five hundred dollars.

Effect of such bonds.

§ 141. Every such additional bond is of like force and obligation on the principal and securities thereon, from the time of its approval, and subject to the same remedies as the first official bond.

First bond not discharged.

§ 142. In no case provided for under any of the preceding sections of this article, are any of the official bonds, previously executed, discharged; but each remains of the same force and obligation as if the additional bonds had not been given; and any person aggrieved can have his remedy, upon either or all of such bonds, in the same, or in separate proceedings.

Rights of sureties among themselves.

§ 143. The securities in either bond who have been compelled to make any payments thereon, for the principal obligor, have the same remedies against the sureties in the remaining bonds, as co-sureties have against each other; and may recover, against such securities, such an amount as shall be in the same proportion to the sum paid by the plaintiff, as the aggregate penalty of the two bonds bears to the penalty of the bond of the defendant, apportioning the same among the solvent securities.

ARTICLE V.

Of the discharge of the securities on official bonds in certain cases.

SEC.
144. Application of securities on bonds, approved by judge of circuit court or judge of probate to be discharged, to be made in writing, and state certain facts.
145. Addressed to approving officer.
146. Officer to require principal to give a new bond, and notice of the requisition to be served on him.
147. Failure to give new bond vacates the office.
148. New bond to be approved and filed, with the application and requisition, with the first bond.
149. Officer fined for failure to file new bond.
150. On filing the new bond, the applicants are discharged from all liability afterwards accruing.

SEC.
151. New bond binds the obligors from the time of approval, as the first bond does.
152. Filing new bond does not affect the obligors in the first bond who did not apply for discharge, nor the liability of those discharged, before that time, accrued, nor their rights among themselves.
153. Surities, right of contribution as to new bond.

Application of sureties to be discharged.

§ 144. Any person who is security upon the official bond of any public officer, required to be approved by the judge of the circuit court, or judge of probate, can discharge himself from such securityship whenever he is in danger of being made liable on such bond, and can have no adequate remedy against his principal, in consequence of his inability to discharge such liability, upon making an application, in writing, setting forth such facts.

To whom made.

§ 145. This application must be addressed to the officer required to approve such bond, and must be sworn to.

Notice to principal to give new bond.

§ 146. The officer to whom such application is addressed must require the principal named in such application to appear before him, on and at a certain day, and place, and give a new bond; which requisition must be in writing, signed by the officer making the same, and must be personally served on such principal before the day named therein.

Failure to give it.

§ 147. If such requisition is personally served, and the officer named therein fails to give an additional bond, within ten days after the day specified in such requisition, he vacates his office; and the officer making such requisition must at once certify the same to the appointing power, who must fill the vacancy.

How approved and filed.

§ 148. On the execution of the additional bond provided for in this article, the same must be approved, and filed, with the application and requisition, with the first official bond.

Penalty for failure to file new bond.

§ 149. If any officer giving such additional bond fails to file the same, with the application and requisition, as required by the preceding section, within ten days after the approval of such bond, he is guilty of a misdemeanor, and, on conviction, must be fined not less than five hundred dollars.

When securities discharged.

§ 150. On the execution, approval, and filing, of such additional bond, such applicants are exonerated as securities on the bond, on which such application was made, from all liability for any breach of the condition therein contained, accruing subsequently to the filing of such additional bond.

When new bond goes into effect.

§ 151. Every such additional bond approved and filed as in this article is provided for, is binding on the obligors from the time of its approval, and subjects them to the same liabilities, proceedings, and remedies, as are provided in relation to the first official bond of such officer.

Applicants alone discharged.

§ 152. The exoneration provided for in section 150, does not affect the previous liability of any of the obligors, neither are any of the obligors, who have not joined in such application, discharged from any liability, accruing after the filing of such additional bonds; and the obligors in any of the official

bonds, who are not exonerated under the provisions of this article, are liable to any person injured by the breach of any of such bonds, upon either or all of the same, according to the provisions of section 142.

Sureties rights among themselves.

§ 153. Whenever the sureties on either bond have made any payments thereon, on account of the principal obligor therein, they are entitled to the same remedies and recoveries against the sureties in the remaining bonds, as are provided by the provisions of section 143.

ARTICLE VI.

Of proceedings to compel the delivery of books, papers, property, and money, by public officers to their successors.

SEC.

154. When office vacated, (except by death,) officer to deliver the books, papers, property, and money of the office to his successor on demand; by failure to do so he is subjected to a fine.
155. Proceedings to compel delivery, how instituted.
156. Retiring officer may discharge himself by oath.
157. Officer refusing to make delivery, or discharge himself by oath, imprisoned.
158. Search warrant issued to discover such property.
159. If property, books, papers, or money appertaining to the office be found and obtained, they are delivered to the successor in the office.
160. Proceedings when complaint is made that such books, &c., are in the possession of some other person.

Property and papers delivered to successor.

§ 154. In all cases, in which it is not otherwise expressly provided, when any office is vacated, except by the death of the incumbent, all books, papers, property, and money, belonging or appertaining to such office, must, on demand, be delivered over to his qualified successor; and every person violating this section is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than two hundred dollars.

Proceedings to compel delivery.

§ 155. If any person refuses, or neglects, after demand made, to deliver over any books, papers, or property, as required in the preceding section, his successor may make complaint thereof to the judge of the circuit, or judge of probate of the county, in which the person refusing resides; and if such officer is satisfied by the oath of the complainant, and such other evidence as may be offered, that any such books, papers, or property, are withheld, he must grant an order requiring the person so refusing, to show cause before him, on a day, and at a place, named in such order, why he should not be compelled to deliver the same.

Officer discharged on affidavit.

§ 156. At the time so appointed, or at any other time to which the matter may be adjourned, a copy of such order having been personally served on the person so refusing, such

officer must proceed to inquire into the circumstances. If the person charged with withholding such books, papers, or property, makes affidavit before such officer, that he has delivered over to his successor all such books, papers, and property, in his custody, or appertaining to such office, all further proceedings against him must cease.

On refusal, imprisoned.

§ 157. If the person complained against does not make such affidavit, and it appears that any such books, papers, or property are withheld, the officer before whom the proceedings are had must by warrant commit the person so withholding to the jail of the county, there to remain, until he delivers such books, papers, and property, or is otherwise discharged by law.

Search warrant.

§ 158. In the case stated in the preceding section, if required by the complainant, such officer must also issue his warrant, directed to any lawful officer, commanding him, in the day time, to search such places as may be designated in such warrant, for such books, papers, and property, as belonged, and appertained to the office vacated, and to seize and bring them before the officer issuing such warrant.

Delivered to incumbent if obtained.

§ 159. Upon any books, papers, or property, being brought before such officer, by virtue of such warrant, he must enquire, and examine, whether the same appertained to the office vacated; in which case he must cause such books, papers, and property, to be delivered to the complainant.

If in possession of any other person, proceedings to recover.

§ 160. If any person holding any office in this state, dies, or his office in any way becomes vacant, and any books, papers, or property, belonging, or appertaining to such office, come into the possession of any person, the qualified successor to such office may, in the manner before prescribed in this article, demand such books, papers, or property, from the person having the same in his possession; and on the same being withheld, an order may be obtained, and the person charged may, in like manner, make oath of the delivery of all such books, papers, and property, that ever came into his possession; and in case of his failure to make such oath, and to deliver up the books, papers, or property so demanded, such person must be committed to jail, and a search warrant may be issued, and the books, papers or property seized by virtue thereof delivered to the complainant, as herein before prescribed.

ARTICLE VII.

Vacating office, death, resignation, removal, and salary.

SEC.
161. Office is vacated:
1. By death of officer.
2. By resignation when allowed.
3. By ceasing to be a resident.
4. By judgment of a competent tribunal.
5. By law abridging term of office.
6. In other cases provided by law.
162. Judge of probate of the county in which a member of congress resided, must notify the governor of his death, and on the death of other officers, notifies the officer who fills the vacancy.

SEC.
163. Clerk of circuit court to notify governor of the death of the judge of probate.
164. Notice of resignation of governor, to whom sent.
165. Resignation of members of congress, or of the general assembly, to be made to the governor, and of other officers, to the one who fills the vacancy.
166. Notice of removal of officer from his prescribed residence, by whom and to whom given.
167. Notice of judgment removing officer given to appointing power, by clerk of the court.
168. Governor to give notice to general assembly of vacancies to be filled by it.
169. Salary of officers, payable quarterly.

Office, how vacated.

§ 161. Any office in this state, is vacated:

1. By the death of the incumbent.

2. By his resignation, except in such cases as are excepted by law.

3. By ceasing to be a resident of the state, or of the district, circuit, or county, for which he was elected, or appointed.

4. By the decision of a competent tribunal, declaring his election, or appointment, void, or his office vacant.

5. By an act of the general assembly, abridging his term of office, when the same is not fixed by the constitution.

6. In such other cases as are, or may be declared by law.

Notice of death of member of congress or of the assembly, by and to whom given.

§ 162. On the death of any senator, or representative, from this state, to the congress of the United States, or of any member of the general assembly, the judge of probate of the county in which such officer, at the time of his death, resided, must give notice thereof, to the governor; in case of the death of the governor, such probate judge must give notice to the president of the senate; and in case of the death of any other officer, except justice of the peace, and constable, to the officer who is to fill the vacancy.

Of judge of probate.

§ 163. On the death of judge of probate, the clerk of the circuit court, of the county for which he was elected, must give notice thereof to the governor.

Of resignation of governor.

§ 164. The governor, if he resigns during the session of the general assembly, must transmit his resignation to the president of the senate; otherwise to the secretary of state, who must notify the president of the senate.

Of members of congress.

Of other officers.

§ 165. The resignations of senators and representatives in congress, and members of the general assembly, must be transmitted to the governor; and in all other cases, except justices, and constables, to the officer, or tribunal, which fills the vacancy.

Notice of removal from county, &c.

§ 166. Notice of the removal of any officer, other than justices of the peace, or constable, from the state, or from the district, circuit, or county, for which he was elected, or appointed, must be given by, and to the same officers, as notice of his death is required by this article to be given.

Notice of judgment, vacating office.

§ 167. Whenever there is a judgment of a competent tribunal declaring any election or appointment void, or any office vacated, such judgment must, if the vacancy is filled

by appointment, the day after the time for taking an appeal has expired, be certified by the clerk of such court, or the judge, if there be no clerk, to the appointing power.

Of vacancies to be filled by general assembly.

§ 168. The governor must give notice to the general assembly at each session thereof, of all offices to be filled by that body, which have become vacant, or which will be vacated, by the expiration of the term of office, before the next regular session.

Salaries, when due.

§ 169. The salaries of all officers are payable on the last day of each quarter of the fiscal year, unless otherwise provided.

Title 6.

ELECTORS AND ELECTIONS.

CHAPTER 1. Of electors.
" 2. Of general and special elections by the people.
" 3. Of the mode of notifying, and manner of conducting general elections other than for justices and constables.
" 4. Of contesting elections.
" 5. Electors of president and vice president.
" 6. Elections in new counties until entitled to a separate representation for congress and members of the general assembly.
" 7. Elections on amendments to the constitution..
" 8. Penalties for violating the provisions of this title.

CHAPTER I.

OF ELECTORS.

SEC.
170. Qualifications of electors.
171. Disqualifications are:
1. Conviction for bribery, larceny, or other offence, (except manslaughter,) punishable by imprisonment in the penitentiary.
2. Being in service in the army or navy of the United States.
172. What a residence in the meaning of this chapter.

Qualifications of voters.

§ 170. Every white male citizen of the age of twenty-one years, who is a citizen of the United States, who has resided in the state one year next preceding any election, and for the last three months of such year, in the county, or in the city, or town, if entitled to a separate representation, where he offers to vote, is, unless within the disabilities imposed by the succeeding section, a qualified elector, and may vote within the county, or within the city, or town, if entitled to separate representation, of his actual residence, and not elsewhere, for all officers elective by the people.

Who are disqualified.

§ 171. No person must vote at any election in this state:

1. Who has been convicted of bribery, or the offer to bribe, larceny, or any other offence, (except manslaughter,)

punishable by confinement in the penitentiary, by the laws of this state, unless he has been pardoned, and restored by such pardon to all the rights of citizenship.

2. Who is a soldier, seaman, or marine, in the regular army, or navy of the United States.

Residence defined.

§ 172. No person loses or acquires a residence:

1. By a temporary absence without the intention of removing.

2. By being a student in any seminary of learning.

3. By being under confinement or safe-keeping in any jail or penitentiary.

4. By navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence.

5. By being absent from his place of residence in the service of this state or the United States.

CHAPTER II.

OF GENERAL AND SPECIAL ELECTIONS BY THE PEOPLE.

ARTICLE 1. Of general and special elections; for what offices and in what cases.
" 2. Election precincts.
" 3. Special elections other than for justices and constables; how ordered and conducted.

ARTICLE I.

Of general and special elections; for what offices and in what cases.

SEC.
173. What officers elected by the people.
174. General elections for governor, members of congress, members of the house of representatives and tax collectors held first Monday in August, biennially.
175. General elections for senators in each district and clerks of the circuit court in each county held first Monday in August.
176. For electors of president and vice president, when held.
177. Of judges of circuit court and judges of probate, on the first Monday in May.
178. Of county commissioners.
179. Of justices and constables.
180. What vacancies filled by special elections.
181. Special elections held on Monday.

Officers elected by the people.

§ 173. The following officers in this state are elected by the qualified electors, namely: The governor, members of the general assembly, representatives in congress, sheriffs, clerks of the circuit courts, county commissioners, tax collectors, electors of president and vice president of the United States, judges of the circuit courts, courts of probate, and other inferior courts, justices of the peace, and constables.

General elections for governor, members of congress, of the state, house of representatives, tax collectors.

§ 174. General elections for the office of governor throughout the state, members of congress in each congressional district, members of the house of representatives and tax collectors in each county in the state, are to be held on the first Monday in August in the year eighteen hundred and fifty-three, and every two years thereafter.

State senators, sheriffs and circuit court clerks.

§ 175. General elections for the office of senator to the general assembly throughout each senatorial district, sheriffs and clerks of the circuit court in each county in the state, are to be held as often as may be necessary, under the constitution and laws of this state, on the first Monday in August.

Presidential election.

§ 176. General elections for electors of president and vice president of the United States are to be held throughout the state on the first Tuesday after the first Monday in November in the year eighteen hundred and fifty-two, and every four years thereafter.

Election of judges.

§ 177. General elections for judges of the circuit court throughout the circuit, and judges of probate and other inferior courts in their respective counties, are to be held as often as may be necessary on the first Monday in May.

County commissioners.

§ 178. General elections for county commissioners in each county in the state are to be holden on the first Monday in August in the year eighteen hundred and fifty-two, and every three years thereafter.

Justices and constables.

§ 179. General elections for justices and constables are to be held in each election precinct on the first Monday in March in the year eighteen hundred and fifty-three, and every three years thereafter.

Special elections, when and for what offices held.

§ 180. Special elections are to be held in the following cases:

1. Whenever a vacancy occurs in the office of senator or representative to the general assembly, by reason whereof any district or county will be deprived of its full representation, when the legislature will be in session prior to the next general election for that office.

2. When a vacancy occurs in the office of representative to the congress of the United States, by which the state will be deprived of its full representation, at any time congress may be in session prior to the next general election for that office.

3. Whenever any general or special election for members of the general assembly or for representatives in congress is not held.

4. In such other cases as are or may be provided for by law.

Monday, day of elections.

§ 181. All special elections provided for by this article must be holden on Monday.

ARTICLE II.

Election Precincts.

SEC.
182. To be established and boundaries defined.
183. Court house is the place of voting in that precinct; place of voting in each precinct to be fixed.
184. Precincts and places of holding election to be recorded.
185. Precincts may be altered; when and in what manner.
186. Alterations also to be recorded.
187. Sheriffs to give notice of the establishment and alteration of precincts and places of holding elections.
188. What the notice must contain; how published.
189. Judges of probate failing to record precincts and sheriffs failing to give notice, fined.
190. If court fails to establish precincts, special court to be held; and if not established by special court, judge of probate to do it.

Counties laid off into precincts.

§ 182. The court of county commissioners of each county must, at a court to be held on the first Monday in May, one thousand eight hundred and fifty-two, lay off their respective counties into the necessary number of election precincts, and define clearly the boundaries of the same.

Place of voting in.

§ 183. The place of holding elections in the precinct in which the court house is situated is at such court house; and the court must at the same term fix a place in each of the other precincts at which all elections therein must be held.

Numbered and recorded.

§ 184. Such precincts must be duly numbered and entered, with their boundaries and places where elections are to be held therein, on the records of such court, within three days after its adjournment.

How and when altered.

§ 185. Such courts may alter the precincts so formed and change the places of holding elections therein, at a court to be held on the first Monday in February, one thousand eight hundred and fifty-three, and on that day every three years thereafter, and not at any other time; but no such alteration must take effect until the first Monday of March next thereafter.

Changes to be recorded.

§ 186. All alterations made in such precincts, or changes of the places of holding elections therein, must be entered of record within three days after the adjournment of the court at which the same were made.

Notice to be given by sheriff.

§ 187. Notice of the formation of such precincts, their boundaries, number, and place of holding elections therein, and of all alterations and changes therein, must be given by the sheriff of the county within fifteen days after the adjournment of the court at which such precincts were formed or changes made.

What the notices must state.

§ 188. Such notice must contain an accurate description of each precinct by its number and boundaries, and must specify the place where elections are to be held therein; and if any alteration is made in the boundaries or number of any precinct, or of the place where elections are to be held therein, the same must be specified in the notice, which must, within the time prescribed by the preceding section, be posted up at the court house door, and at one public place in each election precinct.

Failure to record or give notice.

§ 189. Any judge of probate, failing to record within the time, and any sheriff failing to give the notice in the manner, and within the time, required by this article, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Fine.

If court fails to lay off, &c.

§ 190. If the court of county commissioners of any county fail to lay off their county into election precincts, and appoint places of holding elections therein, according to the provisions of this article, on the first Monday in May, one thousand eight hundred and fifty-two, a special court may be held for that purpose, at any time within two months thereafter; and if no such special court is held, the judge of probate must, within one week after the expiration of such two months, perform the duties of the court of county commissioners, as required by this article, and failing so to do, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than two hundred dollars.

Special court held.

ARTICLE III.

Special elections, other than for justices and constables, how ordered and conducted.

SEC.
191. Special elections under this article, ordered by governor, and writs of election to issue; what the writ specifies.
192. Proclamation of special election to congress.
193. Sheriff to give notice of time and place of special election.
194. Sheriff appoints inspectors.
195. Conducted as general elections.

Special elections ordered by Governor.

§ 191. All special elections provided for by this article, are to be ordered by the governor, who must issue writs of election, directed to the sheriffs of the counties in which such election is required to be held; and must specify therein, the district, or county in which, and the day on which, such election is to be held; the cause and object of the same; the name of the person in whose office the vacancy has accrued; and in all cases in which a special election is directed in a district composed of more than one county, such election must be directed to be held on the same day in each county.

Proclamation of election for Congress.

§ 192. The governor must also give notice of any special election for representatives in congress, by proclamation, published in two papers, at the seat of government.

Sheriff to advertise election in his county.

§ 193. Whenever the sheriff of any county receives a writ of election directing a special election to be held, or receives notice of a special election for representatives in congress, by proclamation, such sheriff must immediately give notice of the time, place, and object of such election, by publication in some newspaper in his county, if there be any published therein, and if not, by notice at the court house door, and at three other public places in his county; and any sheriff fail-

ing to comply with the provisions of this section, is guilty of a misdemeanor.

Inspectors appointed.

§ 194. When any special election is ordered by the governor, the sheriffs of the counties in which such election is to be held, must, within three days after receiving notice thereof, appoint three inspectors of such election for each precinct in his county, and such inspectors, with the returning officers, to be appointed as hereinafter provided, are to conduct such election at their respective precincts; and any sheriff failing to comply with the provisions of this section, is guilty of a misdemeanor; and, on conviction, must be fined not less than one hundred dollars.

How conducted.

§ 195. Special elections are to be held and conducted, the returns thereof made and certified, certificates of election given, and in all other respects, unless otherwise expressly provided, to be regulated by the provisions of this title, in relation to general elections.

CHAPTER III.

OF THE MODE OF NOTIFYING AND MANNER OF CONDUCTING GENERAL ELECTIONS, OTHER THAN FOR JUSTICES AND CONSTABLES.

ARTICLE 1. The appointment of, and notice to, inspectors and returning officers; notice of the election; attendance of inspectors and returning officers; appointments of clerks, and oaths.
" 2. Of opening and closing the polls, voting and challenges.
" 3. Of counting out and estimating the votes, giving the casting vote, preserving ballots and poll lists, and making returns to the returning officer of the county.
" 4. Certificates of election, returns of returning officers of counties, in certain cases, in relation to certain offices, and proceedings thereon; casting vote in certain elections; returns of returning officers of congressional and senatorial districts; and allowances to returning officers in certain cases.
" 5. Of general and special elections, of justices and constables.

ARTICLE I.

The appointment of, and notice to, inspectors and returning officers; notice of the election; attendance of inspectors and returning officers; appointment of clerks, and oaths.

SEC.
196. Inspectors for each precinct appointed by judge of probate.
197. Sheriff returning officer of county, his duty as such:
1. To give notice of election.
2. To appoint inspectors if judge of probate fails.
3. To appoint returning officer of each precinct.
4. To give them notice.
198. Inspectors and returning officers to be present at election.
199. On failure of inspectors to attend.
200. Returning officer absent, inspectors to appoint.
201. Clerks appointed.
202. Oath of inspectors and clerks.
203. Sheriff fined for neglect of duty.

Inspectors, how appointed.

§ 196. The judges of probate must, at least thirty days before the holding of any general election in this chapter pro-

vided for in his county, appoint three inspectors to act at the place of holding elections in each precinct, a list of whose names must be furnished by him, to the sheriff, within three days after such appointment; and any judge of probate failing to comply with the provisions of this section, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Returning officer, his duty, &c.

§ 197. The sheriff is the returning officer of the county for all general elections, in this chapter specified. It is his duty:

1. To give notice at least thirty days before each election, by publication in some newspaper in his county, if there is any published therein, and if not, by writing set up at the court house door, and three other public places in the county, of the time of holding, and the offices to be filled by such election.

2. On the failure of the judge of probate to appoint inspectors, as provided in this article, or if no such officer is qualified, then to act in his place, in the appointment of such inspectors.

3. To appoint, at least thirty days before such election, a returning officer for each precinct in his county.

4. To give notice to such inspectors and returning officers at least five days before such election.

Inspectors and returning officers to meet.

§ 198. The inspectors and returning officers appointed under this article, must be present at the place of holding the election in their precincts, by the hour of nine in the morning on the day of election.

Failure of inspectors to attend.

§ 199. On the failure of the inspectors to attend at that hour, such as are present may complete their number; if none are present, the returning officer of the precinct must appoint three others, to act in their place; and if such returning officer is absent, any thee freeholders or householders may act.

Of returning officer.

§ 200. If the returning officer is not present at the hour appointed, the inspectors, or those acting as such, must appoint one.

Clerks of election.

§ 201. The inspectors, before opening the polls, must select two persons to act as clerks.

Oath of inspectors and clerks.

§ 202. Before opening the polls, the inspectors and clerks must take an oath, to perform their duties at such election, according to law, to the best of their judgment; and the inspectors must also swear, that they will not themselves, or, knowingly, allow any other person to compare the number of the ballots with the number of the votes enrolled; which oath may be administered by the inspectors to each other, or by the returning officer, or a justice of the peace.

Sheriff's neglect of duty; fine.

§ 203. Any sheriff failing to give notice of elections, or to appoint inspectors, or returning officers, and to notify them when practicable, as required by the provisions of this article, is guilty of a misdemeanor; and, on conviction thereof, must be fined not less than one hundred dollars.

ARTICLE II.

Of opening and closing the polls; voting and challenges.

SEC.
204. Hours of opening and closing the polls.
205. Proclamation before election opened.
206. Vote to be by ballot.
207. What ballot is, and what to specify.
208. Name of person offering ballot to be called out, and his ballot received if not objected to.
209. Name of voter placed on poll list, and number of his vote.
210. Number then placed on ballot without opening it.
211. In elections for certain officers, ballots for each office placed in separate box.
212. Challenge of voter.
213. Challenged party to be sworn.
214. Then examined as to qualification.
215. Record of conviction of crime received, and evidence of identity of person.
216. Certificate of naturalization not required, but oath made in writing, and filed.
217. Refusing to be sworn or to answer, vote rejected.
218. Ballot rejected for disqualification, marked and preserved.

Election hours.

§ 204. The polls must be opened at each place of voting, in each precinct, between the hours of nine and ten, in the morning, and kept open, without intermission, or adjournment, until the hour of five in the afternoon, and no longer.

Proclamation of commencement.

§ 205. The inspectors, before they commence receiving ballots, must cause it to be proclaimed aloud at the place of voting, that the election is opened.

Vote by ballot.

§ 206. At all elections by the people, the electors must vote by ballot.

What ballot contains.

§ 207. The ballot must be a paper ticket, on which must be written, or printed, or partly written, and partly printed, the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen.

If no objection made, ballot to be received.

§ 208. When any person offers to vote, the returning officer must call his name audibly, and distinctly; and if there be no objections as to the qualifications of such person as an elector, must receive his ballot.

Voters numbered on poll lists.

§ 209. The name of each elector, whose ballot has been so received, must immediately be taken down by each clerk on separate lists, which are headed "names of voters," and called poll lists; and the number of the order, in which such elector votes, must at the same time be entered by each clerk against his name; the first elector voting being number one; the second, number two; and so on to the last elector voting.

Ballot also numbered and deposited.

§ 210. The returning officer must then hand the ballot to one of the inspectors, who must number it with the same number as the name of the voter on the poll list, and the ballot must then, without being opened, or examined, be deposited in the proper ballot box.

Separate ballot boxes for certain offices.

§ 211. At all elections for governor, representatives in congress, members of the general assembly, judges of the circuit, probate, and other inferior courts, the ballots given

for each of such offices must be deposited in separate boxes.

Challenge of voter.

§ 212. Any person offering to vote, may be challenged by the returning officer, by either of the inspectors, or by any qualified elector; and it is the duty of each inspector to challenge any person offering to vote, whom he knows, or suspects, not to be qualified as an elector.

Voter then sworn.

§ 213. When any person offering to vote is challenged, if his ballot is not withdrawn, one of the inspectors must tender to him the following oath: "You do swear that you will fully answer all such questions as may be put to you, touching your qualifications as an elector."

Examined.

§ 214. The inspectors, or one of them, must examine him as to his qualifications as defined by the fifth section of the third article of the constitution of this state.

Record of conviction received.

§ 215. The inspectors may also receive proof that the person challenged is disqualified as an elector by the commission of one of the crimes specified in section 171 of this code; but he must not be required to answer any question as to his conviction of such crimes, nor must any evidence thereof be received other than a duly authenticated record of such conviction; except such proof as is necessary to establish his identity with the person named in such record, or such as may be adduced by him to rebut such evidence of identity.

Affidavit of naturalization.

§ 216. If it appears, on the examination of the person challenged, that he is a naturalized citizen, he must not be required to produce a certificate or record of such naturalization, but may be required to make affidavit, in writing, setting forth that he has been naturalized; the time when, as near as may be, to the best of his recollection; and the place where; which affidavit must be filed in the office of the judge of probate by the inspectors.

Refusing to be examined vote rejected.

§ 217. If any person refuses to take such oath, or to answer any of such questions, or answering that he is a naturalized citizen, to make the affidavit required by the preceding section, his vote must be rejected.

Ballot rejected after examination, to be preserved and marked.

§ 218. If on such examination and proof, it appear that the person challenged is not a qualified elector, according to the constitution, and the provisions of this code, his vote must be rejected, and the ballot marked with the name of the person offering it, laid aside by the inspectors.

Authority of inspectors.

§ 219. The inspectors have authority to maintain regularity and order; to prevent all disorderly and riotous conduct during the election, and during the canvass, and estimate of the vote, after the polls are closed; and to keep access to the polls free and unobstructed.

Rioters, &c., imprisoned.

§ 220. If any person refuses to obey the lawful command of the inspectors, or by riotous or disorderly conduct in their presence or hearing, interrupts or disturbs their proceedings, they may commit such person to the jail of the county, for not exceeding twenty-four hours, by an order directed to any sheriff or constable, either of which officers are bound to

execute such order, and willfully failing so to do are guilty of a misdemeanor.

ARTICLE III.

Of counting out and estimating the vote, preserving ballots and poll lists, and making returns to the returning officer of the county.

SEC.
221. Counting out votes, when and how conducted.
222. Votes counted out aloud, and separate lists of the votes of each candidate kept; double ballots rejected, and superfluous names also.
223. Statement of vote made in writing, and poll list signed and certified, sealed and delivered returning officer.
224. Ballots labeled and sealed; how disposed of.
225. Returning officer of precinct to deliver to returning officer of the county the statement and poll list.
226. When returning officer to make estimate of the county vote, and where and in what manner.
227. Casting vote in election by county.
228. Statement of the vote to be made by returning officer of the county, delivered to judge of probate, by him recorded.
229. Person having highest vote declared elected.
230. Returns and poll lists, how disposed of.
231. Want of form not to vitiate.

Vote counted out publicly.

§ 221. The counting out of the votes may commence at any time after the hour of two in the afternoon, when the inspectors are at leisure; and it must commence as soon as the polls are closed; must be done as publicly as practicable without inconvenience to those engaged, and not adjourned until fully completed.

Manner of counting out vote.

§ 222. In counting out, the returning officer or one of the inspectors must take the ballots, one by one, from the boxes in which they have been deposited, at the same time reading aloud the name of the persons written or printed thereon, and the office for which such persons are voted for; they must separately keep a calculation of the number of votes each person receives, and for what office he receives them; and if two or more ballots are found rolled up or folded together, so as to induce the belief that the same was done with a fraudulent intent, such ballots must be compared by their number with the poll lists, and if ascertained to be fraudulent, must be rejected; or if any ballot contains the names of more persons than the voter had a right to vote for, the first of such names on such ticket, to the number the voter was entitled to vote for, only must be counted.

Statement of votes and poll lists certified and given to returning officer.

§ 223. As soon as the ballots are all counted out, the inspectors must ascertain the number of votes received for each person, and for what office, and must make a statement of the same, in writing, which statement must be signed by them; they must also certify, in writing on one of the poll lists, that it is the poll list of the election precinct at which they were managers; the day and year on which such elec-

tion was held, and for what offices; which certificate must be signed by them; and such statement of the votes, and poll lists, thus certified, must be sealed up together, directed to the returning officer of the county, and be delivered to the returning officer of the precinct.

Ballots and poll lists, how disposed of.

§ 224. The inspectors must then seal up the ballots deposited in the different boxes, and the rejected ballots in separate parcels, which parcels must be labeled, so as to show for what office, or offices, the ballots contained therein were received, and in case of rejected ballots, the label must so designate them; and must also seal up the other poll lists, and label the same; and the ballots and poll lists thus sealed up, must be kept for sixty days, and then be destroyed, without opening, unless within that time the inspector having them in keeping is notified, that the election of some office for which the election was held will be contested; in which case he must proceed as is hereinafter in this title provided for.

Statements and poll lists returned to county returning officer.

§ 225. The statement of votes and the poll list delivered under the provisions of this article to the returning officer of the precinct, must be delivered to the returning officer of the county, within three days after the election; and on failure, the returning officer of the precinct is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Vote of county to be estimated.

§ 226. On the Saturday next after the election, at the hour of twelve in the morning, the returning officer of the county in person, or by deputy, at the court house, in the presence of the judge of probate and clerk of the circuit court, or if there be no such judge or clerk, or if either of them fail to attend, his place must be supplied by a respectable freeholder or householder of the county; and in the presence of such other persons as choose to attend, must make a correct estimate from the returns of the votes, from the several precincts in his county, of the whole number of votes given therein for each office, and the person to whom such votes were given.

Casting vote when office is filled by one county.

§ 227. On making such estimate, if it is found that two or more persons have the highest and an equal number of votes for the same office, to be filled by the votes of a single county, the sheriff of the county in person, or if he is absent or his office vacant, the judge of probate, and if he be absent or his office vacant, the clerk of the circuit court of such county, must give the casting vote as between such persons.

Statement of election to be signed and delivered judge of probate.

§ 228. As soon as the estimate required is made, and the casting vote, in the case provided for by the preceding section, given, the returning officer of the county, or the person attending in his place, must make out a statement in writing showing:

1. What offices the election was held to fill.

2. The whole number of votes given in the county, for each office, according to the returns from the election precincts.

3. The names of the persons to whom such votes were given, the number each one received, and the office he received them for.

Which statement, signed by him, must on the same day be delivered to the judge of probate of his county, or, if there be no judge of probate, to the clerk of the circuit court of such county, and must, by such judge or clerk, be recorded in his office.

Recorded by him.

Election declared.

§ 229. The person having the highest number of votes, including the casting vote, given for each office, to be filled by the votes of a single county, must be declared duly elected to such office.

Returns and poll lists of precincts then delivered to judge of probate. Kept twelve months.

§ 230. The returns and poll lists of the different precincts must then be delivered to the judge of probate, by the returning officer of the county, or if there be no such judge, to the clerk of the circuit court, and must be kept by such judge or clerk, one year free to the inspection of all persons; unless the election of some person declared to be elected at such election is contested; in which case they must be preserved, subject to the order of the officer or tribunal trying such contest, until the same is finally determined.

Returns, &c., not set aside for want of form.

§ 231. No return, poll list, or certificate, made to the returning officer of the county, must be set aside for want of form, or on account of not being properly directed, if the same can be clearly understood; and any such return, poll list, certificate, signed by a majority of the inspectors, is sufficient.

ARTICLE IV.

Certificates of election; returns of returning officers of counties in certain cases; in relation to certain offices, and proceedings thereon; casting vote in certain elections; returns of returning officers of congressional and senatorial districts; and allowances to returning officers in certain cases.

SEC.
232. Returning officer to give person elected by the county a certificate of election.
233. When person elected by a county, is commissioned by the governor, return to be made to secretary of state by mail.
224. Commission, when issued.
235. In elections for governor, returns made to speaker of the house.
236. In elections of representatives in the general assembly, returns, how made.
237. Senatorial districts formed by one county, sheriff is the returning officer.
238. In elections of senators, returns made to the returning officer of the district by sheriff of each county.
239. Sheriff of each county to make returns of congressional election to returning officer of the district.
240. Estimate of vote in congressional or senatorial district, when and by whom made.
241. Notice to be given to solicitor of failure of returning officers of counties to make returns to the officer of the congressional or senatorial district.
242. In case of a tie vote for senator of a district or member of Congress, returning officer to give casting vote.
243. Certificate of election then given—

SEC.
entitles member of congress to a commission.
244. Returns of election for congress made to secretary of state.
245. Of senatorial election, to secretary of state.
246. Compensation of returning officers of counties, when and how paid.
247. Returning officers of counties to make returns of elections of circuit judges to secretary of state. Penalty for failure.
SEC.
248. Secretary of state to make an estimate of the vote and commission person elected.
249. Who gives casting vote in case of tie vote for circuit judge.
250. The returns must be in writing. Contents of the returns.
251. Manner of making returns.
252. Returns, &c., not vitiated for want of form.

Certificate of election.

§ 232. In all cases in which any person is declared duly elected, according to the provisions of the preceding article, to any office to which he is chosen by the votes of the county in which the election was held, the returning officer of such county must make out a certificate of his election, and deliver it, on demand, to the person entitled thereto.

If officer to be commissioned by governor returns made to secretary of state.

§ 233. In all cases in which the persons elected by the vote of a single county are commissioned by the governor, the returning officer of such county must make return of such election to the secretary of state, by mail, to be deposited in the post office within three days after the declaration of election is made, as required in the preceding article.

When commission to issue.

§ 234. A commission may issue to the person appearing from such returns to be elected, on the receipt of the same by the secretary of state, or it may issue on the production of the certificate of election to the person named therein.

Returns in election for governor.

§ 235. When any general election is held for the office of governor, the returning officer of each county must make a return of such election, as held in his county, by mail, directed to the speaker of the house of representatives, to the care of the secretary of state, at the seat of government; and must also forward a duplicate return, by a member of the general assembly, which must by such member be delivered to such speaker, on or before the third day of the session of the general assembly next after such election.

In elections of representatives in the general assembly.

§ 236. When any general election is held for representatives to the general assembly, the returning officer of each county must make return of such election, by mail, to the secretary of state, and must also transmit a duplicate return to him, by a member of the general assembly, which must be delivered by such member on or before the second day of the session.

Returning officer of senatorial district.

§ 237. When a senatorial district is formed by one county, the sheriff of such county is the returning officer of such district.*

Returns of senatorial elections; to whom made.

§ 238. When a general election is held for the office of senator to the general assembly, and the senatorial district is composed of more than one county, the returns of such election must be made by the returning officers of the proper

*See section 28.

counties to the returning officer of such senatorial district, within five days after making the estimate of the county vote, as required by section 226; and should any returning officer of any county fail to comply with the provisions of this section, he is guilty of a misdemeanor, and, on conviction, must be fined not less than five hundred dollars.

Penalty for failure.

Of elections to congress.

§ 239. Whenever a general election is held for the office of representative in congress, the returns of such election must be made by the returning officers of the proper counties, to the returning officer of the congressional district, within six days after the estimate of the county vote, as required by the provisions of section 226; and if any returning officer of a county fails to comply with the provisions of this section, he is guilty of a misdemeanor, and, on conviction, must be fined not less than five hundred dollars.

Estimate of vote in congressional and senatorial elections, how and when made.

§ 240. At the hour of twelve in the morning, on the second Saturday after any election for the office of senator to the general assembly, in a district composed of more than one county, or for representative in congress, the returning officer of such senatorial or congressional district, either in person or by deputy, at the court house of his county, in the presence of the judge of probate and the clerk of the circuit court of his county, and if either of them fail to attend, their places must be supplied by a respectable freeholder or householder of such county; and, in the presence of such other persons as choose to attend, must, from such returns, and the vote given in his own county, make a correct estimate of the number of votes given to each person, throughout the district, for such office.

Notice of failure to make returns to be given.

§ 241. The returning officers of each congressional and senatorial district, must give notice of the failure of any returning officer within their respective districts, who fail to make returns, according to the provisions of this article, to the solicitor of the circuit, which includes the county of the returning officer so failing, by the third day of the circuit court to be held in such county, next after such failure; and the returning officer of any congressional or senatorial district, failing to comply with the provisions of this section, forfeits the sum of five hundred dollars, one half to the use of the state, the other to the use of the person suing for the same.

Penalty.

Returning officer gives casting vote.

§ 242. If it be found, on making the estimate of the votes, according to the provisions of this article, that any two or more persons have received the highest, and an equal number of votes for the office of representative in congress, or senator to the general assembly, the returning officer of such congressional or senatorial district, as the case may be, must, in person, give the casting vote as between such persons. If such returning officer is not present in person, then such vote must be given by the judge of probate of his county.

§ 243. After making the estimate of the vote, and, if necessary, giving the casting vote, the person having the highest

number of votes for the offices designated in the preceding section, must be declared duly elected, and a certificate of election given them, on demand, by the returning officer of the district, which certificate, if it be an election for representative to congress, entitles the person therein named to a commission. Certificate of election.

§ 244. Whenever any election is held for the office of representative in congress, the returning officer of the district must make return of such election by mail, to the secretary of state, to be deposited in the post office within three days after the estimate ef the district vote, as required in this article. Congressional districts, returns, to whom made.

§ 245. Whenever any general election is held for the office of senator to the general assembly, the returning officer of the district must make return of such election by mail, to the secretary of state, and must also forward a duplicate return by a member of the general assembly, which must be delivered by such member to the secretary of state, on or before the second day of the session. In senatorial district.

§ 246 The returning officers of counties making returns to returning officers of congressional or senatorial districts, as required in this article, are allowed at the rate of ten cents a mile, going and returning, estimating the distance from the court house of their counties to the court house of the returning officer of such district, by the direct mail route, if there be one, and if not, by the land route most usually traveled, and ferriages; for which amount the comptroller must, on the affidavit of the party entitled thereto, draw his warrant on the state treasury; but no such allowance must be made, unless such returning officer makes oath that he made such return, either in person or by deputy. Pay of county returning officers.

§ 247. Whenever a general election is held for the office of judge of any judicial circuit, the returning officer of each of the counties composing such circuit, must make return of such election within his county, to the secretary of state, within thirty days after the estimate of the county vote, as required by section 226, and failing to make such return within the time prescribed, he forfeits to the state the sum of five hundred dollars, to be recovered on motion to be made by the solicitor in the name of the state, before the circuit court of the county of the officer so failing, on one day's notice; and on the trial of such notice, the certificate of the secretary of state of such failure, is presumptive evidence of the fact. Returns in elections for circuit judge. Penalty for failure to make returns.

§ 248. The secretary of state may at any time after such returns have been received, and must within three days after the time for making them has expired, make an estimate from such returns of the vote of the circuit for such office, and the person having the highest number of votes therefor, must be commissioned. Estimate of votes, &c.

§ 249. If, in making such estimate, it is found that any two or more persons have the highest, and an equal number

Casting vote.

of votes for such office, the secretary of state must notify the sheriff of the county in such circuit, which has the largest white population, according to the returns of the state census, taken last before such election; which sheriff must give the casting vote between such persons, and certify the same to the secretary of state, within thirty days thereafter; and the person to whom such casting vote is given, must then be commissioned.

Returns in writing and signed.

§ 250. The returns of elections made under the provisions of this article must be in writing, signed by the returning officer, and must show:

What they must show.

1. The day and year in which the election was held, and for what office.

2. The whole number of votes given in the county or district of such returntng officer, and for what office.

3. The names of the persons to whom any of such votes were given.

4. The number of votes given to each.

5. The casting vote, by, and to whom, given.

Returns, how made.

§ 251. Returns of elections made under this article, must be sealed up and directed to the officer to whom the return is to be made, and when directed to be made by mail, must be deposited in the post office at the court house of the county of the returning officer, or if there be no post office at the court house of such county, then in the one nearest thereto.

Not bad for want of form.

§ 252. No return or certificate of any election made under this article, is to be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions herein contained, if the same can be clearly understood.

ARTICLE V.

Of general and special elections for justices and constables.

SEC.

253. Elections of justices and constables for each precinct, when held.
254. Elected by electors of the precinct.
255. Notice of election, when and by whom given.
256. Inspectors and returning officers appointed.
257. When inspectors absent.
258. Returning officer absent, another appointed.
259. Returning officer and inspectors sworn.
260. Poll lists kept, and election conducted as other elections.
261. Returning officer returns poll list, and gives casting vote.

SEC.

262. Judge of probate to send names of justices elected to secretary of state, and give them and constables certificates of election.
263. Justices elected to be commissioned.
264. Special elections, when and by whom ordered.
265. Conducted as general elections.
266. Those elected serve for unexpired term.
267. Penalty for voting, if not qualified.
268. For voting more than once.
269. Penalty for not ordering or giving notice of election.

SEC.
270. Notice of vacancy in office of justice, by and to whom given.
271. Of vacancy in the office of constable, by and to whom given.
272. Failure to give notice a misdemeanor.

General elections, for whom held.

§ 253. A general election for two justices and one constable must be held in each election precinct, in each county, on the day and year prescribed by section 179 of this code.

By whom chosen.

§ 254. These officers are elected by the qualified electors residing at the time of the election, and voting, in the election precinct.

Notice of election.

§ 255. Ten days' notice of the time and place of such election, must be given by the sheriff, by advertisement, at the court house door, and three other public places in the county.

Inspectors and returning officers.

§ 256. The sheriff of the county must also, ten days before such election, appoint two inspectors, and a returning officer, to manage the same, and give them notice at least five days before such election.

In case of their absence.

§ 257. Should one only of the inspectors attend, he must appoint a householder of such precinct to act with him, and if neither attend, any two householders of the precinct may act.

When returning officer absent.

§ 258. If the returning officer fails to attend, the inspectors may appoint one.

Officers sworn.

§ 259. Before receiving any votes, the inspectors and returning officer must take an oath to conduct such election fairly, which oath may be administered by one to the other.

Conducted as other elections.

§ 260. A list of persons voting at such election must be kept, and the challenges made, and qualifications determined on, as is provided in this title for other general elections; the returning officer to determine any question on which the inspectors are divided.

Returns and casting vote.

§ 261. On counting out the votes, if it be found that two or more persons have received the highest, and an equal number of votes for the same office, the returning officer must give the casting vote, and must return the names of the persons elected, and a list of the voters, to the judge of probate of his county, within five days after such election, who must preserve the list of voters for one year, free to the inspection of all persons.

List of those elected sent to secretary of state. Certificates of election.

§ 262. Not less than five, or more than ten days after such election, such judge of probate must forward by mail, to the secretary of state, the names of the persons elected in his county, at such election, to the office of justice of the peace, and must also give to them, and the persons elected constables, a certificate of election.

Justices to be commissioned.

§ 263. The secretary of state must, on the receipt of the names as provided for in the preceding section, commission such persons as justices of the precinct, and county, for which they were elected; and may also, on the failure to receive such names, commission such persons, on the production of their certificates of election.

Special elections.

§ 264. Special elections for such officers, or either of them, must be ordered by the sheriff of the county in the following cases:

When held.

1. When no general election is held.

2. When a vacancy occurs by the death, resignation, or removal of such officer from the election precinct.

3. When the election for such offices, or either of them, is declared void by a court of competent jurisdiction.

4. When no special election is held at the time appointed.

Notice of special election.

§ 265. Special elections for these offices must be held upon the same notice, given by advertisement at some public place in the precinct, conducted by the same persons, and the returns made by and to the same officer, returns, and list of voters preserved, certificates of election given, names forwarded to the secretary of state, and commissions issued, in all respects the same as in this article provided, for general elections for the same officer; except the return made by the returning officer of the election precinct, must state the cause of such special election, and in case of vacancy, the name of the person whose vacancy is supplied.

Returns to show the cause of election and vacancy filled.

Elected for unexpired term.

§ 266. Justices and constables elected at special elections hold only for the unexpired term, and until their successors are qualified.

Voting without qualification. Penalty.

§ 267. Any person voting at any election embraced in this article who is not entitled, forfeits fifty dollars, to be recovered before any justice of the election precinct in which he voted, to the use of the person suing for the same.

Voting twice. Penalty.

§ 268. Any person voting more than once in any such election, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Sheriff failing to order election. Penalty.

§ 269. Any sheriff failing to order a general election for the offices specified in this article, or failing to give notice according to its provisions, forfeits fifty dollars, to be recovered by any person suing for the same, before any justice of any precinct in the county.

Notice of vacancy.

§ 270. When a vacancy in any election precinct is occasioned by the death or removal from such precinct of any justice, the other justice for such precinct, if there be one, and if not, the constable therein, must give notice to the sheriff of such vacancy, the cause, and the name of the justice whose office is vacated.

Vacancy in office of constable; notice.

§ 271. When a vacancy in any election precinct is occasioned by the death or removal from such precinct of the constable thereof, notice thereof must be given to the sheriff by the justice of such precinct, residing the nearest to such constable, specifying the cause of the vacancy, and the name of the constable.

Neglect to give notice.

§ 272. The failure to give notice as required by the two preceding sections is a misdemeanor.

CHAPTER IV.

OF CONTESTING ELECTIONS.

ARTICLE 1. What elections may be contested and by whom, on what grounds, and general provisions in relation thereto.
" 2. Of contesting elections of members to the general assembly.
" 3. Of contesting elections of offices filled by the vote of a single county, except members of assembly and judges of probate, and of justices and constables.
" 4. Of contesting the election of judge of probate.
" 5. Of contesting the election of circuit judge.
" 6. Appeals and fees to officers.

ARTICLE I.

What elections may be contested and by whom. On what grounds, and general provisions in relation thereto.

SEC.
273. Any elector may contest the election of circuit judge, senator, or any office filled by the vote of a single county or precinct. On what grounds.
274. Malconduct of officers does not annul election unless it affected the result.
275. Illegal votes not to annul unless they produced the result.
276. No rejection of legal votes unless result affected.
277. Notice of the number of illegal votes received and of legal votes rejected, and by whom given or offered, to be given before trial.
SEC.
278. How motion served.
279. On contest statement of grounds to be made on oath.
280. What statement sufficient.
281. Either party to have copy of the poll lists and returns.
282. Copies evidence of the facts stated.
283. Contestant to give security for costs.
284. Inspectors to preserve rejected ballots, returns, and poll lists, for the court trying the cause.
285. Voters examined as to their qualification. Proviso.

Who may contest elections to office filled by vote of one county, or of senators or circuit judges.

§ 273. The election of any person declared elected to the office of judge of the circuit court, senator to the general assembly, or to any office which is filled by the vote of a single county, or to the office of justice, or constable, may be contested, according to the provision of this chapter, by any one who was at the time of either of the elections, in this section specified, an elector of the circuit, senatorial district, county, or election precinct, in which such election was held; for any of the following causes:

Causes of contesting.

1. For malconduct, fraud, or corruption, on the part of any inspector, clerk, or returning officer.

2. When the person, whose election to such office is contested, was not eligible thereto at the time of such election.

3. On account of illegal votes.

4. On account of the rejection of legal votes.

Election not annulled unless caused by unlawful acts.

§ 274. No malconduct, fraud, or corruption, on the part of the inspectors, clerks, or returning officers can annul or set aside any election, unless the same was such as to cause the person whose election is contested to be declared elected, when he had not received the highest number of legal votes.

§ 275. No election must be annulled, or set aside, on ac-

Nor for illegal votes unless they affected the election.

count of illegal votes, unless it appears that the number of illegal votes has been given to the person whose election is contested, which, if taken from him, would reduce the number of his legal votes, to or below the number of legal votes given to some other person for the same office.

Unless the legal votes refused would have changed the result.

§ 276. No election must be annulled or set aside on account of the rejection of legal votes, unless it appears that such legal votes, if given to the person intended, would have increased the number of his legal votes to or above those received by any other person for the same office.

Notice of the illegal votes given and the legal votes rejected.

§ 277. No testimony must be received of any illegal votes, or the rejection of any legal votes in any contested election, unless the party contesting, has given to the adverse party notice, in writing, of the number of illegal votes, and by whom given, or the number of legal votes rejected, and by whom offered, which he expects to prove on the trial.

Notice, how served.

§ 278. This notice must be served personally, or left at the place of residence of such party, at least ten days before the trial.

Statement of grounds of contest under oath.

§ 279 When any elector chooses to contest any election to any office embraced in this article, he must make a statement in writing setting forth specifically:

1. The name of the party contesting, and that he was a qualified elector of the circuit, senatorial district, county, or election precinct, in which the election was held, at the time of holding the same.

2. The office which such election was held to fill, and the time of holding the same.

3. The particular ground, or grounds, of such contest. Which statement must be verified by the oath of the contesting party, or some one of such party, to the effect that he believes the same to be true.

What statement sufficient.

§ 280. When the reception of illegal votes is alleged as a cause of contest, it is a sufficient statement of such cause, to state generally, that illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes, to or below the number of legal votes given to some other person for the same office.

Copies of the poll lists and returns.

§ 281. The officer in whose office any of the returns, or the poll lists of any election, which, under the provisions of this article, may be contested, are filed, must deliver to either party, on application, certified copies of the same, on being paid his legal fees therefor.

Copies are evidence on the trial.

§ 282. A copy of any such returns, or poll lists, duly certified by the officer in whose office the same are required to be kept, is, on the trial of the contest, presumptive evidence of what is set forth in such return, and that the person named in the poll lists, voted at the precinct and election designated therein; and if the election and precinct does not appear from the poll lists, the certificate of such officer, designating the precinct and election at which such poll list was taken, is presumptive evidence of such facts.

§ 283. The party contesting any election under this chapter, must give security for the costs of such contest, if he should fail therein; to be filed and approved as is hereinafter provided for. Security for costs.

§ 284. The inspectors of the counties in which any election was held which is contested, must, on receiving notice of such contest, preserve the rejected ballots, returns, and poll lists, of the different precincts in such election, subject to the order of the officer or tribunal before whom such contest is tried, until the final determination of the same. Return poll lists and ballots to be kept for the court.

§ 285. Any person examined as a witness may be required to answer if he voted at such election, and to answer touching his qualifications; except as to his conviction for any offence, which could, under the provisions of this code, disqualify him. If he was not a qualified voter at such election, he may then be required to answer for whom he voted; and any witness answering such questions must not be convicted in any criminal prosecution, for having voted at such election. Voters may be examined as to their qualifications. Not to be prosecuted.

ARTICLE II.

Of contesting election of members to the general assembly.

SEC.
286. On contest of election, security for costs given.
287. Notice of contest, and grounds of contest, how served.
288. When security for costs, and notice to be given.
289. Service of notice and statement, how proved.
290. Penalty on officer for neglecting to serve notice, &c.
291. Testimony, when taken.
292. By deposition, on notice of five days.
293. When by interrogatories, proceedings, &c.
294. Defaulting witness, proceedings against.
295. Fees of witnesses and commissioners taxed as costs.
296. Manner of executing and returning commission.
297. Costs, when and by whom taxed, proceedings to recover costs.
298. Execution issues against contestant and his sureties.
299. Clerk's fee for issuing execution.

§ 286. When any elector contests the election of any senator or representative to the general assembly, he must first give security for the costs of such contest, which must be acknowledged before, and approved by the clerk of the circuit court, of the county of the returning officer of the the senatorial district, if such contest be of the election of a senator; and if of the election of a representative, by the clerk of the circuit court of the county in which such election was held. In contests of elections to the general assembly, security for costs.

§ 287. The contesting party must next give notice to the person whose election is contested, by having served on him or left at his usual place of residence, by the sheriff, or some constable, a copy of the grounds of contestation and affidavit, as required by the provisions of section 279. Notice of contest. Affidavit of grounds.

Security for costs and notice; when given.

§ 288. The security for costs must be given, and the person whose election is contested, notified in the mode prescribed by the preceding section, within twenty days after he is declared elected.

Evidence of service of notice.

§ 289. The original statement of the grounds of contest and affidavit, must, after such service, be returned to the office of the clerk of the circuit court, in which security for the costs has been given, with the return of the officer endorsed; which return is presumptive evidence of the service.

Neglect of duty by officer.

Penalty.

§ 290. If any sheriff or constable fails to give notice within the time, and in the mode prescribed in this article, if practicable for him so to do, he is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Testimony, when taken.

§ 291. After the giving of the notice prescribed in this article, either party may take testimony.

By deposition on notice.

§ 292. Such testimony must be taken by deposition; the commissions to be issued upon application of either party, without affidavit, by the judge of probate, or the clerk of the circuit court of any county in which such election was held, on five days' notice of the time and place of taking it.

When taken by interrogatories.

Attendance of witnesses, &c.

§ 293. If the testimony is taken by interrogatories, a copy of the interrogatories must be served on the adverse party, five days before the issue of the commission, or notice given of the time and place of taking the deposition, when taken without interogatories: the witnesses subpœnaed, subpœnas served, and certificates of attendance given, in like manner as is in this code provided for taking the depositions of witnesses in actions at law, except that when taken by interrogatories, a written notice, giving information as to what office application will be made, to issue the commission, must be served on the adverse party, with a copy of the interrogatories.

Witness failing to attend.

§ 294. If any witness being summoned fails to attend, the commissioner must certify the same on the back of the subpœna, and return the same to the next circuit court of the county in which such witness was summoned to appear, which court must proceed against him, as against other defaulting witnesses in such court; the return of the commissioner being presumptive evidence of his default.

Fees of witnesses and commissioner.

§ 295. Such witnesses and commissioners are to be allowed the same compensation as is allowed to witnesses and commissioners, upon the execution of commissions from courts of law, to be taxed as is hereinafter provided for.

Commission, how executed and returned.

§ 296. All testimony taken in contests of elections under this article, must be certified, endorsed, and sealed up, as is required in taking depositions in suits at law; must be directed to the presiding officer of that branch of the general assembly before which such contest is to be tried, at the seat of government; and deposited in the nearest post office.

§ 297. On the determination of such contest, the secretary

of the senate, or clerk of the house, as the case may be, must tax the costs due to the commissioners, witnesses, the sheriff and other officers, for serving notices and subpœnas, as for similar services in courts of law, and certify the amount of each separate item, the name of the person entitled thereto, and the result of such contest, to the clerk of the circuit court, in which security for costs is by the provisions of this article required to be given; and the clerk of such court must thereupon issue execution in favor of the successful party for the amount of such costs; specifying the items, the amount of each, and the person entitled thereto, in the bill of costs: which execution must be made returnable to the term of the circuit court of such county, next after its issue, may be issued as often as necessary: and must, when collected, be paid by the officer collecting, on demand, to the parties entitled thereto.

Cost, how taxed and certified.

Execution to be issued for costs.

§ 298. If it be certified that the determination of such contest was against the party contesting, such execution must issue against such party, and his security, for costs.

Against the contestant and his securities.

§ 299. The clerk is entitled to one dollar for issuing the first execution, and fifty cents for each alias execution.

Clerks fees for execution.

ARTICLE III.

Of contesting elections of offices filled by the vote of a county, except members of the general assembly, and judges of probate; and of justices and constables.

Sec.	
300 and 301.	On contest by any elector; statement of grounds sworn to by contestant, filed with judge of probate, and security for costs given; trial day appointed.
302.	Notice of contest and copy of statement to be served.
303.	Witnesses summoned.
304.	Defaulting witnesses.
305.	Depositions, when taken.
306.	Pay of witnesses and commissioners. Continuances.
307.	Judge of probate examines ballots, hears evidence, and renders judgment.
308.	Successful party entitled to commission.
309.	Proceedings in case of a tie vote.
310.	Party elected being ineligible, election void, and vacancy declared and certified.
311.	Costs in successful contest, by whom paid.
312.	On unsuccessful contest, principal and sureties liable.
313.	Death of defendant abates proceedings.
314.	When abated by death of contestant, any elector may continue them on giving security, &c.
315.	On death of contestant, contest abates.
316.	Trial by jury, when awarded.
317.	When probate judge incompetent, circuit judge to try the case.
318.	Proceedings on transfer of case to circuit court.
319.	When tried by circuit court—continuance.
320.	Tried as by judge of probate, &c.

§ 300. Any elector choosing to contest any election for any office which is filled by the vote of a single county, except for members of the general assembly and judges of probate; or to contest any election for justice or constable,

Judge of probate to fix day for trial.

must, within fifteen days after such person is declared duly elected, present a statement of the grounds of contest, verified by affidavit as required by section 279, to the judge of probate of the county in which such election was held; who must appoint a day, not less than fifteen or more than twenty days, from the time of such presentation for the trial thereof, and endorse the same on such statement.

Security for costs.

§ 301. He must also at the same time give security for the costs of such contest, to be approved by such judge.

Notice to be served.

§ 302. A copy of such statement, with the day of trial endorsed thereon, must be served on the person whose election is contested, or left at his usual place of residence, at least ten days before the day appointed for trial, by any sheriff or constable, and returned to such judge, with the mode of service endorsed thereon.

Witnesses, how summoned.

§ 303. After giving the notice required by the preceding section, either party is entitled to subpœnas to compel the attendance of witnesses on the day fixed for the trial, which must be issued, on application, by the judge of probate before whom the contest is to be tried.

Defaulting witnesses.

§ 304. The same proceedings may be had against defaulting witnesses as in matters litigated in the courts of probate; such proceedings being returnable to any regular court of probate, held within three months after such proceedings are taken.

Depositions.

§ 305. Testimony may also be taken by deposition in such cases, and in like manner, as in matters litigated in the probate court.

Pay of witnesses and commissioners.

Continuances.

§ 306. The witnesses and commissioners are entitled to the same compensation as in other cases; and the court may, for good cause, continue the trial to some other day: but no continuance must be over twenty days, and such trial must not be continued more than twice on the application of the same party.

Authority of judge of probate.

§ 307. Such judge of probate has authority to make an examination of the ballots given or rejected in such election, so far as the same may be necessary to arrive at a correct judgment; may make, and enforce by attachment, all necessary orders to obtain possession of the same; must be governed in the trial and determination of such contest by the

Rules of evidence.

rules of law and evidence governing the determination of questions of law and fact, in courts of law in this state, so far as the same are applicable; and after hearing the proofs

Judgment.

and allegations, must give judgment, either confirming or annulling such election altogether, or declaring some other person than the one whose election is contested, duly elected.

Effect of judgment.

§ 308. If it appear that any other person than the one whose election is contested, received, or would have received had the ballots intended for him and illegally rejected, been received, the highest number of legal votes; judgment must be given declaring such person duly elected, which judgment, if it be in relation to an officer entitled under the pro-

visions of this code to a commission, must be certified to the secretary of state, who must commission such person; and such judgment has the effect of depriving the person whose election is contested of all right or claim to such office, and of investing the person declared by such judgment duly elected, with the right to the same.

If tie vote is ascertained.

§ 309. If it appear that two or more persons have, or would have had, if the ballots intended for them and illegally rejected, had been received, the highest and an equal number of votes for such office, the trial of such contest must be temporarily adjourned, and such result certified to the officer who, under the provisions of this code, is entitled to the casting vote in such election; and the casting vote being given, judgment must be rendered, declaring the person to whom such vote is given, elected; and if such person is not the one whose election is contested, the judgment must be certified to the secretary of state, and such person commissioned, as under the preceding section.

Proceedings.

Election void if person elected be ineligible.

§ 310. When the person whose election is contested, is found to be ineligible to the office, judgment must be rendered declaring the election void, and certified to the appointing power, who must fill the vacancy as in other cases; or if it be the election of a justice or constable, such judgment must then be certified to the sheriff of the county.

Costs when contestant is successful.

§ 311. When the election is declared void, or when any other person than the one whose election is contested, is declared elected, the party contesting recovers of the person whose election is contested all costs, for which execution may issue, returnable to any regular term of the court of probate, within three months after its issue.

If unsuccessful.

§ 312. In all other cases the person whose election is contested, recovers of the party contesting all costs, for which execution against him and his securities may issue, returnable as in the preceding section.

Death of person elected.

§ 313. Upon the death of the person whose election is contested, before final judgment, the proceedings abate, at the costs of the contesting party, for which execution may issue against him and his securities, returnable as in the preceding section.

Death of contestant.

§ 314. In case of the death of the contesting party before final judgment, the proceedings may be continued by any person in his place, to be substituted by the court, on giving security for the costs which have accrued, or may accrue; and if one of the persons contesting dies, the contest may be continued by the other.

Idem.

§ 315. In case of the death of such contesting party, and no one continues such contest in his place, such contest abates; and judgment is rendered against his security for costs, to be collected by execution, as other costs under this article.

Trial by jury, when awarded.

§ 316. In all contests under this article, when the election is contested on either of the two first grounds specified in

section 273, the person whose election is contested is entitled to a trial by jury; the issue to be made up under the direction of the court, and a jury summoned, as in cases litigated in the probate court.

Judge of probate incompetent circuit judge to try the cause.

§ 317. When the judge of probate to whom the presentation of the grounds of contest is made, is incapacitated, under section 560 of this code, from trying such contest, he must endorse on such statement the particular grounds of his incapacity, and that such contest be tried on the first day of the next circuit court of such county.

Security for costs given and papers filed with circuit court clerk.

§ 318. In the case provided for in the preceding section, security for costs must be given to the clerk of such court, and the statement so endorsed, when served according to the provisions of section 302, must be returned to the clerk of such circuit court, by whom subpœnas must be issued on application of either party, or commissions to take testimony, as in other cases at law: such subpœnas being returnable to the day fixed for trial.

When to be tried.

§ 319. Such circuit court must proceed to try such contest, on the first, or any other day of such court, or it may for cause continue such contest to a day after the termination of the circuit, or to the next succeeding term: but such contest must be tried by, or during next succeeding term, unless continued by the failure of the presiding judge to attend, or by reason of his being disqualified from setting on such trial; in either of which cases, such term is not to be counted.

Continuances.

Rules when trial is before circuit court.

§ 320. Such contests, when tried by the circuit court, are governed by the provisions of this article, as far as the same are applicable; and execution for costs issues as herein provided, returnable to the next regular term of such court.

ARTICLE IV.

Of contesting the election of judges of probate.

Sec.		Sec.	
321.	Statement of grounds of contest, and notice, how made.	323.	Testimony, how taken.
322.	When notice and security for costs given, notice with mode of service endorsed on statement to be returned.	324.	Defaulting witnesses.
		325.	Preceding article applies to such contests.

Security for costs.

Statement of grounds and notice.

§ 321. To contest any election for the office of judge of probate, the party contesting must give security for the costs of such contest, to be approved by the clerk of the circuit court of the county in which the election was held; must make the statement of the grounds of such contest, and give notice to the person whose election is contested, in the mode prescribed by section 302.

§ 322. Such security for costs must be given, and such person thus notified, within twenty days after he is declared elected; and the original statement, with the action of the officer as to the mode of service endorsed thereon, must be returned to such clerk. Security for costs. Notice to person elected.

§ 323. After the service and return of such statement, as prescribed in the preceding section, either party is entitled, on application, to subpœnas, and commissions for the examination of witnesses, to be issued as in other cases in such court, returnable to the first day of the term next thereafter. Testimony, when taken.

§ 324. If the witnesses fail to appear, the same proceedings may be had against them for defaults as in other cases pending in such court. Defaulting witnesses.

§ 325. Such circuit court must try, or continue such contest, according to the provisions of the preceding article, in relation to contested elections tried in the circuit court; and all the provisions in relation to the trial, continuance, issues, rendition of judgment, and issue and return of execution, applicable to contests tried under the provisions of the preceding article in the circuit court, so far as the same are applicable, apply to contests of the election of judges of probate. Case tried as under the preceding article.

ARTICLE V.

Of contesting the election of circuit judge.

SEC.
326. On statement presented, chancellor to fix the time and place of trial.
327. Security for costs to be given.
328. Service of notice on defendant.
329. Testimony, how taken.
330. Authority of chancellor—trial by jury when allowed.
331. Chancellor to attend and try, or continue the contest.
332. When chancellor absent, register sets another day for trial.
333. The provisions as to other trials of contested elections apply to trials by the chancellors.

§ 326. The party choosing to contest any election for the office of circuit judge, must, within twenty days after the person whose election he contests is declared elected, present the statement of the grounds of contest, as required by section 279, to the chancellor of the division in which such election was held, who must appoint a day of trial, not less than thirty, nor more than fifty days from the day of such presentation, and a place of trial, which must be at some place in the circuit in which such election was held, and where, under the laws of this state, a court of chancery is required to be held; which day and place of trial must be endorsed on such statement. How contested before chancellor of the division.

§ 327. The party contesting must, within ten days thereafter, give security for the costs of such contest, to be approved by the register of the district in which the same is to be tried. Security for costs.

Notice to person elected.

§ 328. A copy of such statement, with the endorsement, must be served on the person whose election is contested, or left at his usual place of residence, at least twenty days before the day appointed for the trial, by a sheriff or constable, and returned to the register in chancery designated in the preceding section.

Testimony.

§ 329. The testimony in such contest may be taken by deposition, as in chancery causes; and either party may, on the trial, examine such witnesses as attend.

Authority of the Chancellor.

§ 330. The chancellor may make all necessary orders in relation to the transmission of the ballots given in such election, to the place of trial; and in relation to any other matter required in such contest; and in the cases in which the right of trial by jury is given, under the third article of this chapter, must, on the application of the person whose election is contested, make up an issue, and try the same by a jury, to be impannelled from the bystanders, or in such other mode as such chancellor may direct.

When tried by jury.

Continuance.

§ 331. The chancellor must attend on the day appointed, and try, or continue such contest to some other day; but no continuance must be for more than thirty days, and not more than twice on the application of the same party.

If chancellor fail to attend.

§ 332. Should the chancellor fail to attend on the day appointed for trial, or at any adjourned day, the register must continue the contest to a day certain, not exceeding twenty days.

Tried as other contested elections.

§ 333. The provisions of the other articles of this chapter, in relation to contested elections, apply to contests in this article named, so far as the same are applicable.

ARTICLE VI.

Appeals and fees to officers.

Sec.		Sec.	
334.	Appeals from probate court to circuit court.	337.	On affirmance, execution issues for costs.
335.	From the circuit court to supreme court.	338.	Fees of officers of court in appeal cases.
336.	Security for costs of appeal.		

From probate court.

§ 334. In all contested elections before the judge of probate, an appeal lies to the circuit court within five days thereafter.

From circuit or chancery court.

§ 335. From the judgment of the circuit court, on all appeals taken under the preceding section, and on all contested elections before the chancellor, or circuit court, an appeal lies to the supreme court, within five days thereafter.

Security for costs of appeal.

§ 336. Before taking an appeal, under the provisions of the two preceding sections, the appellant must give bond and security for the costs thereof, to be approved by the

judge of probate, register, or clerk of the circuit court, as the appeal may be taken from the judgment of the judge of probate, chancellor, or circuit court; and the names of such securities certified with the record to the appellate court.

Execution for costs on dismissing appeal.

§ 337. The clerk of the appellate court, if the decision is against the appellant, may issue execution for the costs of the appeal, against such securities.

Fees of officers.

§ 338. The judge of probate is entitled to three dollars for each trial of a contested election: the sheriff to two dollars for each jury summoned; and for other services on such contest, the judge of probate, sheriff, and other officers, are entitled to the same compensation as for the like services in the circuit, or chancery court, to be taxed as costs against the unsuccessful party.

CHAPTER V.

ELECTORS OF PRESIDENT AND VICE PRESIDENT.

SEC.
339. When chosen—by general ticket.
340. County returning officer to make returns to secretary of state.
341. Returns estimated by governor, and result proclaimed.
342. Governor to give casting vote.
343. Pay of county returning officers; when and how made.
344. Returning officer fined for neglect.
345. Electors to meet — when and where—to supply vacancies.
346. Vote by ballot, &c.
347. Pay of electors—when made.

Elected by general ticket.

§ 339. On the day prescribed by this code, there are to be elected, by general ticket, a number of electors of president and vice president of the United States equal to the number of senators and representatives in congress which this state is, at the time of such election, entitled to.

County returning officers to return to secretary of state.

§ 340. In all elections for electors of president and vice president, the returning officer of each county must, within twelve days after making the estimate of the county vote, as required by section 226, return the result of the same to the secretary of state.

Governor to estimate the vote.

§ 341. The governor, within five days after the time for making the returns by the returning officers of the counties, as prescribed in the preceding section, must, in the presence of the secretary of state, comptroller, and treasurer, or either of them, in the absence of the others, estimate the returns, ascertain who are elected, and notify them by proclamation.

To give the casting vote.

§ 342. If, on such estimate, it is found that an election of the number of electors to which this state is entitled is not made, by reason of two or more persons having received an equal number of votes, the governor must forthwith decide between those having such equal number of votes.

Pay of the returning officers.

§ 343. The returning officers of the counties making returns to the secretary of state, under the provisions of this

article, are to be allowed at the rate of ten cents a mile, going and returning, estimating the distance from the court house of such returning officer to the seat of government, by the direct mail route, if there be one, and if not, by the land route usually travelled, and also ferriages; for which the comptroller must, on the affidavit of the returning officer entitled thereto, draw his warrant on the state treasury; but no such allowance is to be made unless such returning officer makes oath that he made such return in person or by deputy.

Penalty for failure to make returns.

§ 344. Any returning officer failing to make his return within the time prescribed in this article, forfeits to the state the sum of one thousand dollars, to be recovered by motion to be made by the solicitor in the circuit court of the county of such returning officer, on one day's notice; and on the trial of such motion, the certificate of the secretary of state of such failure, is presumptive evidence of the fact.

Electoral meeting.

§ 345. The electors of president and vice president are to assemble at the seat of government, at ten in the morning, on the first Wednesday in December next after their election, or at that hour on such other day as may hereafter be fixed by congress to elect such president and vice president, and those of them present at that hour must at once proceed by

Vacancies supplied.

ballot and plurality of votes to supply the places of those who fail to attend on that day and hour.

Vote for president and vice president.

§ 346. Their number being completed, they must on the same day vote by ballot for president and vice president of the United States, and do and perform all other duties required by the constitution and laws of the United States.

Compensation of electors.

§ 347. Each elector for president and vice president is allowed four dollars for each day he necessarily attends at the seat of government, and four dollars for every twenty miles travel to and from the same, from the place of his residence; to be estimated in the same manner as is provided by this code in relation to members of the general assembly; to be paid on the oath of such elector by a warrant on the state treasury.

CHAPTER VI.

ELECTIONS IN NEW COUNTIES, UNTIL ENTITLED TO A SEPARATE REPRESENTATION, FOR CONGRESS AND MEMBERS OF THE GENERAL ASSEMBLY.

Sec.		Sec.	
348.	New county to vote with the county from which taken.	350.	Precinct returning officers and inspectors to make returns to returning officer of the old county.
349.	No elector to vote in except entitled to vote in the county from which taken.		

New counties, how they vote.

§ 348. Every new county, as to the right of suffrage and representation, is to be considered as part of the county or counties from which it was taken, until entitled by its numbers to the right of separate representation.

§ 349. No elector can vote at any precinct in any new county for representative in congress or member of the general assembly, until an act of the general assembly is passed, giving to such county a separate representation, unless such elector would have been entitled to vote at such precinct for such officers before the formation of such new county. Elector can only vote at the precincts within his old county.

§ 350. The inspectors and returning officers of each election precinct in any new county must, until such county is entitled to a separate representation, make returns of the elections of representatives in congress and of members of the general assembly to the returning officer of the county in which such precinct was situated before the formation of such new county; for all other officers, the return must be made to the returning officer of such new county. Returns, how made.

CHAPTER VII.

ELECTIONS ON AMENDMENTS TO THE CONSTITUTION.

Sec.
351. Voting on proposed amendments, when and how conducted.
352. Votes estimated and statements made to returning officer.
353. Returning officer to estimate the result and make return signed by him.
354. Returns made to secretary of state, and list of votes, and their votes also sent to him.

§ 351. At the general election held for members of the general assembly, the returning officer of each precinct must enquire of every voter voting for representatives if he votes for or against the proposed amendment; and if there is more than one amendment proposed, he must enquire of such elector as to his vote on each amendment; separately designating them in the order in which they have been proposed by the general assembly. If there is but one amendment proposed, the inspectors must cause the clerks of such election to write against the name of the voters on their poll lists the word "yea," or "nay," as each may vote for or against such proposed amendment; if more than one amendment is proposed, the inspectors must cause their clerks to write at the top of their respective poll lists the words "first," "second," "third," and so on according to the number of amendments which have been proposed; and under the words so written to register the vote of each elector voting upon each amendment, by writing against his name and under the word "first," the word "yea," or "nay," as he may vote on the first amendment; under the word "second," the word "yea," or "nay," as he may vote on the second, and so on to the last amendment. Voting on amendments to the constitution; how conducted.

§ 352. The votes given on proposed amendments to the constitution are to be counted and estimated in the same manner in all respects as the votes for representatives to the Votes, how counted.

Statement of votes for and against.

general assembly; and a statement of the number of votes given for and against each amendment, designating them in the order in which they were proposed, must be made to the returning officer of the county, in the same manner as returns of general elections are made to such returning officer, by the same person, and within the same time.

Estimate of the result to be made.

§ 353. The returning officer of the county must at the time he makes the estimate of the vote given in for representatives to the general assembly, and other officers, as required by section 226, in like manner estimate the vote given for or against each of the proposed amendments, and include the result of such vote on each of such amendments, to be made out and signed by him.

To whom and how returned.

§ 354. Such returning officer of the county must, within sixty days after making the estimate required by the preceding section, return the result of such election by mail to the secretary of state; and must also from the poll lists returned to the judge of probate, prepare a list of the names of those who voted at such election for representatives to the general assembly, and on the proposed amendments, or either of them; and the vote of each voter on each of such amendments; which list, certified by such returning officer, must be transmitted by a member of the general assembly from such county, and delivered by him to the secretary of state during the first week of the session.

CHAPTER VIII.

PENALTIES FOR VIOLATION OF THE PROVISIONS OF THIS TITLE.

SEC.
355. Penalty for voting without qualification, or out of county.
356. For voting more than once.
357. Fine for failure to make returns to secretary of state or speaker of the house.
358. Notice to be given solicitor of failure.
359. Fines for neglect of duty by other officers.
360. Improper influence of elector, fine.
361. Fraudulent change of ballot, fine.
362. Improper meddling with ballots or poll lists, fine and imprisonment.
363. Betting on elections; betting by officer.
364. Calling out militia forbid; penalty.

Penalty for illegal voting; voting out of one's county.

§ 355. If any person vote at any election who is not entitled, or if any one votes out of the county, or the city or town, (if entitled to a separate representation,) of his residence, he is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than three hundred dollars.

Voting twice, penalty.

§ 356. If any person votes more than once in the same election he is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than two hundred dollars, and imprisoned not less than three, or more than twelve months, in the county jail.

§ 357. If any returning officer required by the provisions of this title, to make returns of any election to the secretary of state, or the speaker of the house of representatives, fails to make such return within the time herein prescribed, he forfeits to the state five hundred dollars; recoverable by motion, to be made by the solicitor of the proper circuit, in the name of the state, in the circuit court of the county of such returning officer upon three days' notice of such motion; and the certificate of the secretary of state, or of the speaker of the house of representatives, as the case may be, setting forth that such return has not been received, is presumptive evidence of the failure of such officer to make such return. Failure to make returns to secretary of state, or speaker of the house. Penalty.

§ 358. Whenever the return of any officer required by this title to be made to the secretary of state, or the speaker of the house of representatives, is not received within the time prescribed, such secretary of state, or speaker of the house, must give notice thereof to the solicitor of the proper circuit, and furnish him with the certificate specified in the preceding section, and thereupon such solicitor must make the motion as herein required. Notice of such failure.

§ 359. If any inspector, clerk, or other officer, on whom any duty is imposed under any of the provisions of this title, neglects to perform such, or is guilty of any corrupt conduct in the execution of the same, and such neglect or corrupt conduct is not herein expressly provided for, he is guilty of a misdemeanor, and on conviction must be fined not less than fifty dollars. Fines for other neglect of duty by officers.

§ 360. If any person by bribery, menace, or other corrupt means, attempts to influence any elector in giving his vote, or to deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage at any election within this state, he is guilty of a misdemeanor, and must, on conviction, be fined not less than one hundred dollars. Corrupt influence of elector. Penalty.

§ 361. Any person who fraudulently changes the vote of any elector, by which such elector is prevented from voting as he intended, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars. Fraudulent substitution of ballot.

§ 362. If any person after the commencement of any election, fraudulently destroys any of the ballots received, or poll lists taken at such election; or takes away or abstracts any ballot so received; or puts into the ballot box any ballots unauthorized by the lawful permission of the inspectors; he is guilty of a misdemeanor, and, on conviction, must be fined not less than two hundred dollars, and imprisoned in the common jail not exceeding one year, at the discretion of the court. Meddling with ballots or poll lists, Fine and imprisonment.

§ 363. Any person who bets or wagers any money, or other thing of value upon any election held in this state, is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty or exceeding five hundred dollars; and if such person is a sheriff, coroner, constable, or other person concerned in holding or conducting any such election, as an Betting on elections. Penalty. By officer of election.

Penalty. inspector, clerk, or returning officer, he must in addition to the fine above prescribed, be imprisoned at the discretion of the jury, in the county jail, not exceeding six months.

Calling out military. § 364. If any person calls or orders out any of the militia of this state on any day on which any general election is held, except in case of insurrection or invasion, or except in obedience to some civil magistrate to suppress riots or enforce the law; he is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than three hundred dollars.

Penalty.

Title 7.

THE FINANCIAL DEPARTMENT.

CHAPTER 1. Of the duties of comptroller and state treasurer.
" 2. Of certain funds of the state, and their administration.
" 3. Of taxation.

CHAPTER I.

DUTIES OF COMPTROLLER AND STATE TREASURER.

ARTICLE 1. Duties of comptroller in relation to state finances.
" 2. The duties of the treasurer in relation to the state finances.
" 3. The fiscal year, and publication of receipts and expenditures.

ARTICLE I.

The duties of the comptroller in relation to the state finances.

SEC. 365. List of duties.
366. May require information on oath as to account presented.
367. Not to issue warrant to defaulter.
368. Not to receive state funds.
369. Accounts must be sworn to.

§ 365. It is the duty of the comptroller:

Fiscal affairs. 1. To superintend the fiscal affairs of the state, as required by law.

Account with the United States. 2. To keep and preserve in his office, in suitable books, fair and accurate accounts between this state and the United States, including the two and three per cent. funds, the surplus revenue funds, and the funds arising from the distribution of the public lands.

Account of trust funds. 3. To keep the accounts in relation to the school fund, and every other special or trust fund in which the state is interested, the keeping of which is not specially entrusted to other officers.

State bonds. 4. To keep an account of all state bonds issued and paid, and of all interest paid.

Account with treasurer. 5. To keep all accounts between the state and the treasurer, charging him with the balance due when he came into

office, and with all moneys received by him, and crediting him with all warrants drawn on the state treasury, and paid by him.

To audit the account of public officers.

6. To audit and adjust the accounts of all public officers, keeping a regular account with every person in each county in the state who is by law authorized to collect and receive any part of the state revenue, in suitable books, in which he must charge such persons with all sums of money due from them severally, and credit each, with all moneys paid by him to the treasurer, having first certified to that officer the amount or balance due.

Adjust and examine claims.

7. To examine and adjust the claims of all persons against the state, where provision for the payment thereof has been made by law.

To draw warrants on the treasury.

8. To draw warrants on the treasurer for the payment of all moneys directed by law to be paid out of the treasury, in favor of the person authorized to receive the same; stating in such warrant on what account the same is due, and in cases of special appropriation, referring to the law under which it is drawn.

To furnish forms to the revenue officers.

9. To direct the forms to be used by all public officers in collecting, keeping the accounts, and making returns of the state revenue; and to furnish by the first day of March in each year, to the assessors in each county, forms for registering the various descriptions of taxable property, which forms, as near as practicable, must exhibit, at one view, the different species of property taxed; the amount of tax to be paid upon each, and the name of the party to whom assessed.

To prepare and distribute the revenue laws.

10. To have printed by the state printer, immediately after each session of the general assembly, all laws in relation to the revenue passed at such session, and to send a copy, certified by the secretary of state, to each of the assessors, tax collectors, and judges of probate.

To copy his letters.

11. To take and keep copies of all letters written by him on official business.

Receipts for warrants.

12. To take receipts for all warrants he draws, and to preserve, file, and arrange in his office all such receipts, and all accounts by him allowed, with the vouchers and papers relating to the same.

Defaulters.

13. To proceed against all defaulters as required by law.

Annual list of defaulters.

14. To publish in some newspaper at the seat of government, annually, a list of defaulters to the state, whose accounts have remained due and unpaid for one year, with the amount due from each, how the debt accrued, and when it became due.

Docket of suits against defaulters.

15. To keep a docket of all suits brought against defaulters, showing the time when commenced, to what sheriff directed, the sheriff's return, and when and how settled.

Examine security of bonds on file.

16. To examine all bonds for the two per cent. fund, and all other securities for money belonging to the state kept in his office, from time to time, as to the sufficiency of the securities, and on discovering any deficiency therein, forth-

with to report the same to the governor, and to put such bonds or securities in suit when necessary for the collection of the principal and interest.

To report to each house of the general assembly.

17. To report in writing to each house of the general assembly, during the second week of each regular session, his views as to the proper subjects of taxation, with such plans and estimates as in his opinion are expedient for using the public money to the best advantage, for diminishing the public expenses, and sustaining the credit of the state; detailed estimates of the expenditures to be defrayed from the treasury for the ensuing fiscal years must accompany the report, and also tables showing in detail the names of all persons in whose favor warrants have been drawn for each of the two preceding fiscal years, when drawn, under what law in case of special appropriations, and for what amount; the amount of total assessments made in each county for the same years; showing in separate columns the amount of total assessment on each item of taxation, the amount in each county for retail or other licenses, the amount of insolvencies, of commissions, the nett amount of revenue paid into the treasury for each of such years, the condition of the school fund, the two and three per cent. funds, and all other funds, the accounts of which are by law required to be kept in his office.

To make report to the governor the receipts and expenditures biennially.

18. To report in writing to the governor, on the first Monday in December, one thousand eight hundred and fifty-two, and every two years thereafter, the amount of money received and disbursed the preceding fiscal year; and to accompany such report with tables exhibiting the amount of total assessment in the several counties, for the same time; the amount received for licenses granted; the amount of insolvencies and commissions; the nett amount of revenue paid in such year; how much remains unpaid, from what tax collectors or other officers; and what measures have been taken for the collection of the balance due.

Other duties if required.

19. To perform such other duties in relation to the fiscal affairs of the state, as are or may be required of him by law.

May examine claimant on oath.

§ 366. The comptroller has authority to require information on oath, to be by him administered, from any person, touching any claim or account he is required to audit.

Not to draw warrant in favor of defaulter.

§ 367. He must not give any public defaulter any warrant for moneys due him from the state, except the balance which is due after the application of the amount due from the state to the extinguishment of the debt, interest and damages, if any are given by law, due from such defaulter.

Not to receive revenue of state.

§ 368. The comptroller has no authority in any suit or proceeding by him commenced or directed, or in any other case, unless such authority is expressly given, to receive any of the state revenue.

Accounts against the state to be sworn to.

§ 369. All accounts against the state must be accompanied by the affidavit of the party, stating the correctness of the account, and that no portion of the same has been paid, by discount or otherwise.

ARTICLE II.

The duties of treasurer in relation to the state finances.

Sec. 370. List of duties.

§ 370. It is the duty of the state treasurer:

1. To receive and keep the moneys of the state. Receive public money.

2. To pay all warrants drawn under authority of law, by the comptroller on the treasurer, and to pay no money out of the treasury, except on the warrant of the comptroller. Pay warrants on treasury.

3. To take receipts for all payments. To take receipts.

4. To file such receipts and warrants, and to number the same in chronological order, for each fiscal year. To file them.

5. To keep accounts of the receipts and expenditures of the public money. To keep accounts.

6. To enter in his books the amount of money he receives for taxes, license, or on any other account, for the state; so that the nett proceeds of the whole revenue, as well as every branch thereof, and the amount of disbursements, distinctly appear. Account of state revenue.

7. To give information in writing to the general assembly, or either house thereof, or to the governor, when required, respecting all matters appertaining to his office. To give information to the governor or assembly.

8. To report in writing to each house of the general assembly during the second week of the session, the amount paid into the treasury for each of the two preceding fiscal years: showing the amount paid in by each county, and distinguishing such counties as have made partial payments from those which have paid in full; also statements of all sums of money he has paid out on account of the state for each of such years; specifying the amount, to whom paid, and for what, with an exact statement of the balance in the treasury. To make a report to each house of the general assembly.

9. To report in writing to the governor on the first Monday in December in the year one thousand eight hundred and fifty-two, and every two years thereafter, the amount of money received and disbursed the preceding fiscal year, showing the amount paid by each county, and distinguishing such counties as have made partial payments from those which have paid in full, and specifying the amount paid, to whom, and for what, with a statement of the balance in the treasury. Report biennially to governor.

10. To act as agent for the state, to receive the whole or any portion of the two or three per cent. fund, and to give, on the part of the state, his receipt therefor. To receipt for the two or three per cent. fund.

11. To perform such other duties in relation to the fiscal affairs of the state, as are or may be by law required of him. Other duties.

ARTICLE III.

The fiscal year, and publication of receipts and expenditures.

SEC.
371. Year ends on the 30th September.
372. Annual account of receipts and expenditures to be published at the seat of government.

Fiscal year.

§ 371. The fiscal year ends on the thirtieth day of September.

Publication of receipts and expenditures.

§ 372. A regular account of receipts and expenditures of all public money must be published annually in two papers at the seat of government, and the account paid by the warrant of the comptroller on the state treasury.

CHAPTER II.

OF CERTAIN FUNDS OF THE STATE, AND THEIR ADMINISTRATION.

ARTICLE 1. The school fund.
" 2. The university fund.
" 3. Bonds and other securities belonging to the state, where deposited, and payments, to whom made, and how.

ARTICLE I.

The school fund.

SEC.
373. What are school funds.
374. Notes for school lands to be collected by attorney general.
375. He may appoint agents—responsible for their neglect.
376. Collections paid into treasury to credit of the township.
377. Attorney general, when to account with comptroller, and pay over to treasurer all school funds.
378. Certificates of stock to be issued to townships.
379. Registered by secretary of state, and sent to judge of probate for trustees.
380. Tax collector to pay the interest on the stock to county treasurer, &c.
381. Rate of interest.
382. County treasurer to pay it to the trustees, &c.

School funds.

§ 373. School funds, within the meaning of this article, are the proceeds of the sales of lands granted by the United States, to this state, for the use of schools, and all additions that are made to such funds by law; such funds being vested in the state, to secure the objects of the grant.

Notes for school lands; when collected.

§ 374. All notes for school lands deposited with the comptroller, if not paid within six months after maturity, must be placed with the attorney general for collection.

Agents for collection.

§ 375. The attorney general may appoint agents for the collection of such notes, being responsible for any neglect on the part of such agent.

Collections; how paid over.

§ 376. All collections on notes given for the sale of school lands must be paid into the treasury of the state, to the credit of the proper township.

Attorney general to account with comptroller.

§ 377. The attorney general must, within one month after each term of the circuit court of Montgomery county, render to the comptroller a statement in writing, showing the situation of each note for school lands deposited with him for collection, the parties against whom judgment has been rendered, and the return of the sheriff on the execution, and must, within the same time, pay to the treasurer the amounts collected by him; and, failing to comply with this requisition, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Penalty.

Certificates of stock to be issued to the townships.

§ 378. The governor must, from time to time, have issued to the several townships in the state, certificates of stock, showing the amount received for such township, which must be signed by him, and countersigned by the secretary of state; but no certificate of stock must hereafter issue for a less amount than one hundred dollars; and such certificate must bear interest from the first day of October of each year.

To be registered.

§ 379. The secretary of state must register each certificate, and they are to be transmitted to the judge of probate of the county in which the township is, who must copy the same in a book to be kept for that purpose, and deliver the originals to the trustees of the township.

Tax collector to pay over annually the interest due on certificates.

§ 380. The tax collector of each county must, by the first day of August in each year, deposit with the county treasurer the interest which has accrued on the certificates of stock issued to the several townships in his county, and take his receipt therefor; which being certified by the judge of probate to be genuine, and by the proper officer, must be received by the state treasurer in payment of the taxes due the state by such tax collector.

Rate of interest.

§ 381. The certificates of stock bear interest at the rate of six per centum a year, payable annually.

County treasurer to pay it to trustees. Penalty for refusal.

§ 382. The county treasurer must pay to the trustees of any township, on their warrant, any interest in the county treasury, belonging to such township: and, failing so to do on the presentation of such warrant, judgment may be recovered against him and his securities, or any of them having three days' notice thereof, in the circuit court of the county of such treasurer, for the amount of such interest, with legal interest from the time of the presentation of the warrant, ten per cent. damages on the aggregate amount, and costs; the motion to be prosecuted in the name of the township.

ARTICLE II.

The university fund.

SEC.
383. Amount of the fund, and rate of interest.
384. Treasurer to pay the interest, &c.

University fund.

§ 383. The university fund is two hundred and fifty thousand dollars, for the permanent security of which, and the punctual payment of the interest thereon, at the rate of six per cent. a year, forever, the faith and credit of the state are pledged.

Rate of interest, to whom paid, and how.

§ 384. The state treasurer must pay the interest on the university fund at the rate of six per cent. a year, semi-annually, to the treasurer, or any authorized agent of the University of Alabama; but on the application of the treasurer of the university, it is the duty of the comptroller to draw his warrant on the tax collector of Tuskaloosa county for the amount of taxes in his hands, unless it exceeds the amount due from the state upon the university funds, and the receipt therefor must be received by the state treasurer as money.

ARTICLE III.

Bonds and other securities belonging to the state, where deposited, and payments to whom made, and how.

SEC. 385. Deposited with comptroller, paid to treasurer.

Kept by the comptroller. Paid to the treasurer.

§ 385. All bonds and other securities for money belonging to the state or under the control thereof, are to be deposited and kept in the office of the comptroller; and all payments on the same must be made to the treasurer, being first certified to him by the comptroller.

CHAPTER III.

OF TAXATION.

ARTICLE 1. System of taxation, and persons and property exempt therefrom.
" 2. Rates and rules of assessment as to certain property.
" 3. Taxes and licenses to be assessed and collected by judge of probate.
" 4. Taxes on suits to be collected by the clerk of the supreme court.
" 5. Taxes to be collected by certain other officers.
" 6. Other rules to be observed in the assessment.
" 7. Corporations.
" 8. Of the appointment of tax assessors.
" 9. Of the duties of assessor, and other officers in the assessment.

ARTICLE 10. The tax collector, his bond and term of office.
" 11. The duties of tax collector.
" 12. Delinquent taxes, sales of property therefor, and redemption.
" 13. Tax on steamboats, how collected.
" 14. Payment of taxes and licenses.
" 15. Miscellaneous provisions.
" 16. Compensation to assessors and other officers.

ARTICLE I.

System of taxation, and persons and property exempt from.

SEC.
386. Lands taxed in proportion to value.
387. Lands of non-residents not taxed higher than others.
388. Lands of United States not taxed.
SEC.
389. Navigable streams exempt from tax or toll.
390. Persons and property exempt from taxation.

Rate of tax on lands.

§ 386. All lands subject to taxation must be taxed in proportion to their value.

Lands of non-residents.

§ 387. Land belonging to citizens of the United States residing out of the state, cannot be taxed higher than land belonging to persons residing therein.

United States lands.

§ 388. No tax can be imposed on land the property of the United States.

Navigable waters exempt.

§ 389. All navigable waters within the state are to remain forever public highways, free to the citizens of the state, and of the United States, without any tax, impost, or toll thereon, imposed by the state.

Property exempted from taxation.

§ 390. The following persons and property are exempt from taxation:

1. All property belonging to the state, or any county thereof, or the state bank or its branches.

2. All property of the United States.

3. All property of literary, scientific, and benevolent institutions, actually used for the purposes for which such institutions were created; not exempting, however, any of such property when invested in stocks, or employed in any other than the regular business of such institutions.

4. Houses of religious worship and their appurtenances.

5. Places and monuments of the dead, and implements of burial.

6. Agricultural and horticultural, instruments, implements, vehicles, and utensils, when kept for use.

7. The property of revolutionary soldiers and their widows, to the value of one thousand dollars.

8. The property of soldiers who served in the war of 1812, which is exempt from execution.*

9. All insane persons, and their property, to the value of one thousand dollars.

---

* This provision is extended to soldiers who served in the Florida and Mexican wars, and their widows, by the act of 1851-2. See acts 1851-2, page 1, section 2.

ARTICLE II.

Rates and rules of assessment as to certain property.

SEC.
391. Poll taxes, real estate, manufactories, mills, &c.; turnpikes, bridges, ferries, &c.; on slaves, fund to pay for slaves executed; money hoarded or at interest; on money at higher rates; furniture, jewelry, &c.; on vehicles, neat cattle, horses, mules, &c.; on corporations; on auction sales, sales of cigars, factor's commissions, foreign stocks, on sales, on storage, &c.; premiums of foreign insurance companies, on salaries, incomes of officers of corporations, cards, property raffled, gold watches, incomes of lawyers, doctors and dentists, legacies, except from certain persons, and gifts, on revolvers, &c.
392. Accounts of taxable incomes and sales to be kept, penalty.
393. When tax year ends.

Rates of taxes.

§ 391. Taxes are to be assessed by the assessor in each county, on and from the following subjects, and at the following rates:

Poll tax.

1. On every white male inhabitant between the ages of twenty-one and forty-five years; fifty cents.

Free negroes.

2. On every male free negro between twenty-one and fifty years of age; two dollars.

Idem.

3. On every female free negro between twenty-one and forty-five years of age; one dollar.

Real estate.

4. On all real estate, to be estimated at its real value in money, and not at forced sale, according to the best judgment the assessor can form by information, inspection, or otherwise, taking into consideration its location, whether in a town, city, or the country, its proximity to local advantages, its quality of soil, growth of timber, mines, minerals, quarries, fossils, and improvements, excepting such as are herein separately specified and taxed; for each hundred dollars of the value thereof, and at that rate, twenty cents.

Mills, factories, &c.

5. On all saw, grist, and other mills, distilleries and breweries, foundries, forges, establishments for mining, quarrying, working marble, making gins or carriages, and all other manufacturing establishments, printing presses and implements, presses for repressing cotton, and wharves; on every hundred dollars of the value thereof, and at that rate, to be estimated by the annual income, location, and other sources of value, twenty cents.*

Turnpikes, ferries, &c.

6. On each hundred dollars of the value, to be estimated as in the preceding clause of this section, of all turnpikes, toll bridges, causeways, and ferries; twenty-five cents.

Slaves.

7. On each slave under five years, twenty-five cents; between five and ten years, forty-five cents; between ten and fifteen years, eighty cents; between fifteen and thirty years, one dollar and ten cents; between thirty and forty years, eighty cents; between forty and fifty years, fifty cents;

* On all passes, canals, channels, or property of the like kind, estimated in the same manner as mills, &c., on each hundred dollars of the real value of the property, twenty-five cents. Acts 1851-2, page 1, section 1.

between fifty and sixty years, twenty cents; and on each slave working at any mechanical trade, or hired as a mechanic, two dollars.

8. There is also to be assessed and collected, as a separate fund to pay for slaves executed for capital crimes, on each slave under ten years of age, one cent, and on each over ten and under sixty years, two cents. Fund for slaves executed.

9. On all capital employed by agent or otherwise in the way of loan, or trading in paper, at not more than the legal rate of interest, or in the regular exchange business in or during the tax year ending on the thirty-first day of August preceding the assessment, and on all money hoardsd or not invested in such year; on each hundred dollars thereof, and at that rate, twenty-five cents.* Money at interest or hoarded.

10. On all capital employed by agent or otherwise, in or during such year, in the way of loan, or dealing in paper, at a rate greater than the legal rate of interest; on each hundred dollars, and at that rate, fifty cents; and all bills, notes, checks, certificates of deposit or other issues, credits of any corporation, company, partnership, or individual, either in or out of the state, used or employed in the way of loan, dealing in paper, or in a regular exchange business, is regarded as capital under this chapter, and must be assessed as if gold or silver was used or employed. Money loaned at higher interest.

11. On each hundred dollars worth, and at that rate, of all jewelry, plate, household furniture, and ornaments, over the value of two hundred dollars, except family portraits; twenty-five cents. Jewelry and furniture.

12. On all vehicles kept for use, and not exempt from taxation; on each hundred dollars of the value, and at that rate, twenty-five cents. Vehicles.

13. On each head of neat cattle over twenty head; one cent. Neat cattle.

14. On all horses or mules kept principally for the saddle or harness, stud horses and jacks; on every hundred dollars of the value, and at that rate, fifty cents. Horses, &c.

15. On all horses which in or during the tax year preceding the assessment have been entered, trained, or run; two dollars. Race horses.

16. On all corporations created under any law of this state, and not exempt from taxation under section 390, on each hundred dollars of their capital stock actually paid in, and belonging to persons not exempt from taxation; twenty-five cents: but such corporation is exempt from this tax, if it pays a tax upon its separate property equal, at its cost value, to the amount of such capital stock, and so pro rata, in the proportion which its property, separately taxed, bears to the amount paid of its capital stock. On corporations chartered by the state.

---

* On all money purposely kept at interest, whether lent to persons, corporations, or companies, in or out of this state, and whether the evidence of the debt is annually renewed or not, and on which tax is not paid in some other form or manner to the state annually, there shall be assessed and paid, for each hundred dollars, twenty-five cents annually. Acts 1851–2, page 1, section 1.

Auction sales.

17. On the gross amount of all auction sales made in or during the tax year preceding the assessment, except cargo sales of foreign imports, those made by executors, administrators, and guardians, as such, by order of court, or under legal process, and under any deed, will, or mortgage; on every hundred dollars, and at that rate, one dollar.

Private sales by auctioneers.

18. On all private sales made during such tax year by auctioneers; on each hundred dollars, and at that rate, twenty cents.

Sales of cigars.

19. On the value of all sales of cigars, during such tax year, estimating by the invoice price; on each hundred dollars, and at that rate, one dollar.

Factor's commissions.

20. On the gross amount of commissions, or sums charged or received in or during such tax year, by any factor, commission merchant, or auctioneer, in buying, selling, or any other act done in the course of their business; on each hundred dollars, and at that rate, fifty cents.

Foreign stocks.

21. On investments by inhabitants of this state, in stocks of any description out of the state; on each hundred dollars of the amount of such investment, and at that rate, twenty cents.

Sales of merchandise, &c.

22. On the gross amount of sales in or during such tax year of merchandise, fruit, or confectionary, or any article or commodity not herein specifically taxed, made by any person engaged in the business of selling; on each hundred dollars, and at that rate, twenty cents.

Storage.

23. On the gross receipts during such tax year, of all cotton pickeries, and the storage of cotton, or other merchandize; on each hundred dollars, and at that rate, one dollar.

Premiums of foreign insurance companies.

24. On the gross amount of premiums received from their business in this state, during such tax year, by any insurance company not chartered by this state, and doing business herein by agent or otherwise; on every hundred dollars, and at that rate, one dollar.

Salaries.

25. On all salaries fixed by law; on each hundred dollars thereof, and at that rate, fifty cents.

Incomes of public officers and officers of corporations.

26. On each hundred dollars, and at that rate, of gross income over five hundred dollars, of all public officers not receiving salaries fixed by law, all persons in the employment of any corporation created by or under any law of this state, foreign corporation, association, partnership, or individual, such income being derived from such office or employment; fifty cents.

Playing cards.

27. On every pack, or part of a pack of playing cards sold by wholesale or retail, or otherwise disposed of or used during such tax year; ten cents.

Property raffled.

28. On every article, piece of property, or sum of money put up or disposed of by raffle, in such tax year; on each hundred dollars on the amount at which the same is put up, and at that rate, five dollars; to be assessed against the person in possession of the house in which the raffle is had, and if in no house, then to the person making up such raffle, or the owner of the article, or property.

29. On each gold watch kept for use in such tax year by male or female; fifty cents. On gold watches.

30. On every gold safety, vest, or fob chain, silver watch, or clock, kept for use, in such tax year; twenty-five cents. Gold chains, silver watches.

31. On all lawyers, surgeons, physicians and dentists, who have been three years at the practice; ten dollars: or, at their option, on each hundred dollars of their income derived from such profession during such tax year, and at that rate; fifty cents. Incomes of lawyers, doctors, dentists.

32. On every legacy, where letters testamentary have not been taken out in this state, received by any person other than the child, adopted child, grand-child, brother, sister, father, mother, husband, or wife; and on all property given by deed or otherwise, to any such person; on each hundred dollars of the amount or value thereof, and at that rate, to be assessed to the beneficiary, guardian, trustee, or legal representative; two dollars. On certain legacies.

33. On all revolving pistols, bowie knives, and knives of the like kind or description; two dollars. Revolvers, bowie knives, &c.

§ 392. All persons engaged in any business or pursuit the receipts, sales, commissions of which, or capital employed, are subject to assessment under the preceding section, must keep correct accounts of the same for the tax year preceding each assessment, and exhibit the results of the same to the tax collector, verified by oath; and, failing so to do, are guilty of a misdemeanor, and, on conviction thereof, must be fined not less than fifty dollars. Accounts of taxable sales on incomes to be kept. Penalty.

§ 393. The tax year, is the year ending on the thirty-first day of August in each year. Tax year.

ARTICLE III.

Taxes and licenses to be assessed and collected by the judge of probate.

SEC.
394. On legacies two per cent.—execution if not paid.
395. Lectures for pay.
396. On judge of probate's seal, and on licenses.
397. State and county tax on licenses.
398. Licenses granted for a year, unless restricted, and for one place.
399. Fines for acting without license, and retailing liquor, punished by imprisonment.
400. Sales of negroes void as to seller.
401. Judge of probate to require exhibition of license in certain cases.
402. Statement of licenses furnished grand juries.

§ 394. On every legacy, subject under the preceding article to assessment, left by any will, on which letters testamentary are taken out in this state, there must be assessed and collected by the judge of probate of the county in which such letters are taken out, on every hundred dollars, and at that rate of the value or amount, two dollars: and if not paid on the receipt of such legacy, such judge must issue execution for the amount of such assessment against the executor On legacies; how collected.

or administrator and his securities, to be collected and returned as other executions from the probate court.

On pay lectures.

§ 395. On each lecture to which entrance fees are charged, two dollars; if not paid to the judge of probate on demand, the lecturer to be brought before such judge, and fined ten dollars, for each lecture he has failed to pay for, on such demand.

Tax on seal of judge of probate.

§ 396. On each certificate, under their official seal, except to government pensioners, and on all licenses except marriage licenses, the judge of probate must collect a tax of fifty cents.

State and county tax on licenses to retail liquors.

§ 397. Licenses are to be granted and issued under the provisions of this code, on the payment of the following sums as state tax, the county tax thereon, and fees.

1. To retail for one year spirituous or vinous liquors, on any steam boat, or water craft, sixty dollars; in a city or town having more than one thousand inhabitants, seventy-five dollars; in a city, town, or village having more than five hundred and less than one thousand inhabitants, forty dollars; in cities, towns, and villages having less than five hundred inhabitants, thirty dollars; and in the country, twenty dollars.

Auctioneers.

2. To carry on the business of an auctioneer throughout the state for one year; twenty dollars.

Dentists and daguerreanists.

3. To carry on the business of dentistry by any transient dentist who has not been a resident of the state for twelve months, or the business of a daguerrian artist, for one year, throughout the state; fifty dollars.*

Billiards.

4. To keep a pool or billiard table for public play for one year; fifty dollars.

Bagatelle.

5. To keep a bagatelle table for public play for one year; ten dollars.

Ten-pins.

6. To keep a ten pin alley, or alley of the like kind for public play, for one year; twenty dollars.†

Other tables.

7. To keep any other table, stand, or place, for any other game or play, with or without a name, for one year, unless for exercise or amusement only, and not prohibited by law; ten dollars.

Taverns, &c.

8. To keep a hotel, tavern, or house of entertainment for transient persons, for one year, at any one place in any city, town, village, or watering place, or within one mile thereof; on each hundred dollars, and at that rate of the annual rent, two dollars, but in no case less than five dollars.

Restaurat.

9. To keep a restaurat or eating house at any one place in the county, for one year; twenty dollars.

---

* This provision is changed by the act of February 10th, 1852, which provides that the judges of probate may grant licenses to practice the daguerrean art at one station in the county, or in a village not having more than five hundred inhabitants, on paying a state tax of five dollars—in towns of not more than four thousand inhabitants, ten dollars, and throughout the state, for fifty dollars.

† A license may be obtained for a ten pin alley at a watering place, for six months, for ten dollars; and for a billiard table, six months, at twenty-five dollars—the proprietors being subject to indictment for a longer use of them.

Acts 1851–2, page iv., sec. 4.

10. To keep a public race track for one year, on every hundred dollars, and at that rate, of the gross annual income, as near as the same can be ascertained; five dollars, but in no case less than twenty-five dollars. Race track.

11. For theatres, in a city, one hundred dollars, in a village or watering place; thirty dollars, for one year. Theatre.

12. For concerts or musical entertainments for profit, for each; five dollars. Concerts.

13. To exhibit for profit, any museum, wax works, menageries, or curiosities of any kind, except paintings and statuary; on each day's and night's exhibition, fifteen dollars. Musicians, menageries.

14. To exhibit dwarfs, persons of unusual size, or persons or animals deformed, throughout the state, for one year, twenty-five dollars; but not to exceed one hundred dollars, for any number of exhibitions in the same place, on consecutive days, exclusive of Sunday. Dwarfs.

15. To exhibit a circus, feats of activity or strength, or sleight of hand; for each day's or night's exhibition, twenty-five dollars. Circus.

16. To peddle, for one year, on any one steam boat or water craft, one hundred dollars; in a waggon, for each waggon in a county, seventy-five dollars; on a horse, for each horse in each county, forty dollars; on foot, in each county, twenty dollars; but no license is required to peddle articles manufactured or made up in this state; in the distribution or sale of scientific or religious books; or from any deaf, dumb, or blind citizen of this state, peddling books or stationary, on his own individual account, and not as agent for, or partner with another. Peddling.

17. To sell, offer, or expose for sale any slave, by a negro trader, broker, or agent for the sale of slaves, ten dollars for each slave; the license to authorize the sale, offer, or exposure for sale, in any county in the state, and to set forth the name and description of the slaves, except in the case of small children having no name, which must be described by their ages. To sell slaves.

§ 398. All licenses, unless otherwise declared by law, must be for one year, and confined to the county in which they are granted; and when issued for retailing, keeping pool, or billiard tables, ten pin alleys, or alleys of the like kind, or any stand, table or place for any other game or play, to one place only in the county; and in all cases to the person alone to whom the license is granted. For what period license granted.

§ 399. If any person does any act, engages in any business, keeps any table, opens any theatre, gives any concert, exhibition, or performance, specified in this article as the subject of a license; or being a negro trader, broker, or agent for the sale of slaves, sells, offers, or exposes for sale any slave, without first obtaining a license therefor from the proper authority, he is guilty of a misdemeanor, and, on conviction, must be fined not less than the state tax as fixed in this article for such license: and if the conviction is for selling Penalties for acting without license.

Retailers fined and imprisoned.

spirituous or vinous liquor without a license, the court may imprison the offender not exceeding sixty days.

Sales of slaves void as to seller if without license.

§ 400. In addition to the penalties provided by the preceding section, the sale of a slave by a negro trader, broker, or agent for the sale of slaves, is void as to the seller, and the purchase money may be recovered back, by action commenced within one year from the payment thereof.

Exhibition of licenses when required.

§ 401. In those cases in which a license is not confined to one county, it is the duty of the judge of probate to require of the person following the business, or doing the act, to exhibit his license; and on his failure so to do, or if he has any reason to suppose that such person has violated the provisions of section 399, such judge must at once issue his warrant to any sheriff or constable, and cause such person to be brought before him, and bound over to the next circuit court of the county, in a sum equal at least to double the amount of the license money; and, failing to give security, he must be committed to jail, until such security is given, or he is otherwise discharged by law; but if such person, on being brought before such judge of probate, pays the amount of license money, county tax, fees, and all costs, he may be discharged.

On refusal, party bound over to answer.

List of licenses furnished to grand jury.

§ 402. The judge of probate of each county in the state must, on the first day of each circuit court, furnish to the foreman of the grand jury a statement in writing showing the licenses granted under this article within two years preceding such court, to whom, and for what, such license was granted; and, failing so to do, on conviction, must be fined not less than one hundred dollars.

ARTICLE IV.

Taxes on suits to be collected by the clerk of the supreme court.

SEC.
403. Tax on each suit, for state.
404. Taxed with costs and collected by execution.
405. Statement made by clerk each term to comptroller, and receipts paid to treasurer.
406. On failure by clerk to make return or payment, proceedings, &c.

Tax on suits in the supreme court.

§ 403. On each suit in the supreme court, where the final record of the same does not exceed six thousand words, there must be assessed a tax of six dollars, and at the rate of ten cents for each hundred words over that number.

How taxed and collected.

§ 404. The tax assessed by the preceding section must by the clerk of such court be taxed in the bill of costs as state tax, and collected as other costs in such court, the state having a preference therefor over any other costs collected.

Statement to be made to comptroller, and money paid to treasurer.

§ 405. The clerk of such court must, within ten days after each regular term thereof, make a return of, on oath to the comptroller, and pay to the state treasurer the amount of the state tax received or collected by him in each case.

§ 406. The comptroller must also examine the books of such clerk semi-annually, and report all defaults in the return or payment of such tax to the attorney general; and for each state tax not returned and paid over as required by the preceding section, such clerk and his securities are liable to the state, to be collected on motion in the name of the comptroller, according to the provisions of section 2627, before any court having jurisdiction. Statement to be compared with clerk's books, and defaults reported.

ARTICLE V.

Taxes to be collected by certain other officers.

Sec.
407. Secretary of state and comptroller to collect tax on their seals.
408. Tax on seal of circuit clerks and notaries.
409. Commissioners of deeds.

§ 407. The secretary of state and comptroller must collect and pay into the state treasury, for each annexation of the state seal or seal of office, that such officer would be entitled to charge therefor, one dollar. Seal of state and comptroller.

§ 408. Clerks of the circuit court and notaries public must collect and pay over to the judges of probate of their respective counties, on each certificate with their official seal attached; fifty cents. Circuit clerks and notaries.

§ 409. Commissioners of deeds for other states must collect and pay over to the judge of probate of the county in which they reside, for each certificate; one dollar. Commissioners of deeds.

ARTICLE VI.

Other rules to be observed in the assessment.

Sec.
410. Every poll tax assessed in county of residence; real estate where it lies, to the owner on 1st of September; stocks and money, where; on sales, on personal property, where; mortgaged property, to whom; property of infants and estates; real estate of deceased owner and partnership property.

§ 410. The following rules, besides those in this title hereinbefore prescribed, are to be observed in the assessment of taxes:

1. Every person is to be assessed for his poll tax in the county where he resides, when the assessment is made, if he has not been assessed for the same tax year in another county. Poll tax; where assessed.

2. All real property subject to taxation is to be assessed in the county where it lies, to the owner on the first day of Tax on real estate.

September in the same year in which the assessment is made if known; and if the owner is unknown, it is to be assessed as belonging to persons unknown.

Stocks; where assessed.

3. All stocks, when not assessed to a corporation, and money and capital subject to taxation, are to be assessed to the owner or agent in the county where he resides at the time of the assessment; on all sales and purchases subject to assessment, to the person making the same or his agent, in the county in which such sales or purchases are made; and all other personal property, unless to the contrary directed, is to be assessed in the county where it is at the time of, or was, on the first day of September preceding the assessment.

Sales and purchases.

Personal property.

Mortgaged property, to whom assessed.

4. All property mortgaged or pledged, is for the purposes of taxation to be taken as the property of the party in possession.

Trust property.

5. All property subject to taxation in the possession of, controlled, or held, by any trustee, guardian, executor, or administrator, must be assessed to such trustee, guardian, executor, or administrator.

Real estate of deceased owner.

6. The undivided real estate of a deceased person, may be assessed to the executor or administrator of such person.

Partnership property.

7. Partners may be assessed in their joint names, and the property of each is liable for the whole tax.

ARTICLE VII.

Corporations.

Sec.
411. Real estate of corporations, manner of assessment and where.
412. Personal property, where assessed.
413. President to give a list, showing value, &c.
414. Penalty for failure to give in list.
415. Agent of foreign corporation to make return; what to contain.
416. Double tax assessed for failure to make return.
417. Agent also fined.

Real estate.

§ 411. The real property of all corporations subject to taxation, is to be assessed in the county in which the same lies, in the same manner as the real estate of individuals.

Personal property.

§ 412. The personal property of corporations subject to taxation must be assessed in the county where the principal office of such corporation is; if there is no principal office, then in the county in which the business of such corporation is conducted; and if conducted in more than one county, then in the county in which its president, chief officer or agent, resides.

President to return a statement.

§ 413. The president, cashier, secretary, treasurer, or other proper officer of corporations created under the authority of this state, must by the first day of October in each year, make a return in writing and on oath to the assessor of the county in which the personal property is under the provisions of the preceding section subject to taxation, showing:

1. The real and personal property subject to taxation owned by such corporation, on the first day of September, in the same year, and the amount actually paid therefor. Showing the real and personal property.

2. The amount of stock actually paid in by such first day of September. Amount of stock.

3. The amount of stock actually paid in, owned by the United States, this state, or any county thereof, on such first day of September. Amount owned by the United States or the state, or any county.

§ 414. Should the return not be made as, and within the time prescribed in the preceding section, the assessor must assess the whole of the capital stock of such company as actually paid in, and assess a double tax against its real and personal property, subject to taxation in his county, to be assessed upon his best information and belief. Penalty for neglect to make returns.

§ 415. The agent of any foreign corporation having property or doing business in this state, subject to taxation, must by the first day of October in each year, make a return in writing and on oath to the assessor of the county in which the personal property of such corporation is, under the provisions of section 412, liable to taxation, specifying: Agent of foreign corporation to make returns.

1. The personal property owned by such corporation on the first day of September in the same year, subject to taxation. Personal property.

2. The gross amount of insurance premiums, if any, received for or on account of such corporation, during the preceding tax year. Insurance premiums.

3. The capital employed during such year in this state, in the way of loan or trading in paper, at not more than the legal rate of interest, or in the regular exchange business. Capital employed at legal rates.

4. The capital employed during such year in the way of loan or trading in paper, at a rate of interest greater than the legal rate. At higher rates.

5. All other items of taxation in this title herein before enumerated, taxable to such corporation. Other items of taxation.

§ 416. If the agent of any such foreign corporation fails to make return as, and by the time prescribed in the preceding section, the assessor must assess against such corporation and agent a double tax, based upon his best information and belief, as to the property and business of such corporation, subject to taxation in this state. Double tax for failure.

§ 417. If any agent of any such foreign corporation fails to make returns as, and by the time prescribed in this article, he is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars; and in every case of such failure, the assessor must give notice thereof to the solicitor by the first day of the circuit court next thereafter. Agent fined.

ARTICLE VIII.

Of the appointment of tax assessor.

SEC.
418. Court of county commissioners appoints.
419. Term of assessor appointed in January, 1852.
420. No one can be assessor and tax collector at same time.
421. Assessor gives bond; how approved and filed.
422. The code only operates on assessors appointed after August, 1852.

How appointed. Vacancy.

§ 418. The court of county commissioners of each county must, on the second Monday in August in each year, appoint a tax assessor for the county, and when a vacancy occurs, which such court is authorized to declare for any cause, must fill the same as early as practicable.

Term of office.

§ 419. The tax assessor appointed on the first Monday in January, one thousand eight hundred and fifty-two, holds office until the second Monday in August, one thousand eight hundred and fifty-two.

Offices of assessor and collector not to be united.

§ 420. No person can hold the office of assessor and tax collector at the same time.

Bond of assessor.

§ 421. The assessor, before entering on the duties of his office, must give bond, with security, in the sum of one thousand dollars, payable and conditioned as is prescribed by the provisions of section 118, which bond must be approved by the judge of probate of the county for which he is appointed, must be executed in duplicate parts, one of which must be filed in the office of the judge of probate of his county, and the other, by such assessor, in the comptroller's office.

Duties; when to commence.

§ 422. The duties of the assessor, as defined by this code, commence after the appointment of the assessor, on the second Monday in August, one thousand eight hundred and fifty-two.

ARTICLE IX.

Of the duties of assessors and other officers in relation to the assessment.

SEC.
423. Duties of assessor; are to assess all items and subjects of taxation.
424. Separate books of assessment of real and personal property.
425. What the book of real estate to contain.
426. Book of personal property, what.
427. New books made annually, and returned to judge of probate.
428. Notice of assessment in each precinct.
429. Persons liable to assessment to attend and give in list; what list should state; if infirm, sworn list received.
430. On failure to attend, assessor to call at residence; penalty for refusing to give list.
431. Fee for calling at residence in town and country.
432. Double tax assessed for refusal to give a list.
433. Assessment of property for arrears of taxes.
434. Governor to obtain a list of land sold by United States annually.

SEC.
435. Comptroller to furnish list to judges of probate annually.
436. Judges of probate to furnish lists to assessor.
437. Registers, how arranged.
438. Governor to appoint agent to make list; his pay.
439. Comptroller appoints clerk; his pay.
440. Court to sit to examine and correct assessment books.
441. Books compared with registers, and errors corrected.
SEC.
442. When corrected, kept by judge of probate, open to inspection.
443. What the books must show.
444. Judge of probate to send abstract of books to the comptroller.
445. Assessor also to make statement of persons assessed, and the amounts assessed to them, &c., after being corrected, delivered to tax collector.
446. Assessor not to collect taxes; exception.

§ 423. It is the duty of each assessor:

Assess real estate.

1. To assess after the first day of September in each year, and before the first day of the following January, all the real property within his county subject to taxation, according to the rules in this chapter prescribed.

Other items of taxation.

2. To assess, within the same period, all persons, personal property, and other items of taxation, which, under the provisions of the laws of this state, are to be assessed by him.

Books of real and personal property.

§ 424. He must enter the assessment of real and personal property in separate books, suitably ruled and substantially bound.

Book of real estate, what it must show.

§ 425. The book containing the assessment of real property must show in separate columns:

1. The name of the person to whom assessed, unless assessed to an owner unknown, in which case it must be so stated.
2. The description of the property.
3. The contents, when the same can be shown by acres.
4. The valuation.
5. The amount of taxes assessed.

The description of the real property must be shown, when practicable, by sections or sectional subdivisions, townships and ranges, beginning with the lowest number of section, township and range, and proceeding in regular numerical order; if this cannot be done, the assessor must adopt that mode of description which will most clearly and conveniently identify the property; and where several tracts or parcels of land belonging to the same person lie contiguous, forming one entire tract, the whole may be included in one valuation, and so extended.

Book of personal property.

§ 426. The book containing the assessment of personal property must show in separate columns each species of such property, the valuation of the same, and the persons to whom assessed, in alphabetical order.

Books to be made yearly.

§ 427. The assessors must each year make new books of assessment of all property, according to the provisions of the two preceding sections, and return the same to the judge of probate of their respective counties, by the first Monday in January in each year after their election.

Notice of assessment; how given.

§ 428. Each assessor must give at least fifteen days' notice, by advertisement posted at three or more public places, in each election precinct in his county, of the time and place therein, that he will attend to assess the taxes; and he must attend at such time and place and make the assessment.

Sworn list to be handed to assessor of taxable property, &c.

§ 429. It is the duty of all persons within such election precinct, whose persons or property are subject to taxation, upon the notice being given according to the provisions of the preceding section, to attend and give in to the assessor a complete list of their property subject to taxation, and every item upon which such person is liable to be taxed; the lands, in all cases in which such description is practicable, must be given in by sections or sectional subdivisions, townships and ranges; and such persons must also aid the assessor in making a correct assessment, and also make oath, (which may be administered by the assessor,) that such list contains all the property and items for which such person is subject to taxation, to the best of their knowledge and belief; but if the owner, or person having charge of the property, resides out of the county, or is unable to attend, by reason of any infirmity or disability, or is a female, such person may make out such list on oath, as herein prescribed, and the assessor must receive the same.

When list may be sent to assessor.

On failure, assessor to call at residence.

§ 430. If any person subject to taxation fails to comply with the provisions of the preceding section, the assessor must demand of him, at his place of residence, such list; and if such person fails to render the same to the assessor, on such demand, or within ten days thereafter, such assessor must, within the two first days of the next circuit court, return him to the solicitor; and the person so failing is guilty of a misdemeanor, and, on conviction, must be fined not less than twenty dollars.

Penalty for refusal when so called on.

Fee to assessor for calling.

§ 431. Whenever the assessor makes a demand, under the preceding section, he is entitled to twenty-five cents, if the person of whom the demand is made resides in a city or town, and if in the country, fifty cents; to be added to the assessment, and collected as the taxes.

Double tax in case of refusal to give list.

§ 432. If any person fails to give in a list, as in this article required, after demand made, the assessor must ascertain from inquiry, or in any other mode, the property and other items of taxation to which such person is subject, and assess a double tax upon the same, to the best of his information and judgment.

Assessment for arrears due.

§ 433. All property subject to taxation, and not assessed in any year since eighteen hundred and forty-three, must be assessed to the person such property should have been assessed, the year or years it escaped assessment; and in such cases the assessment must show the years such property was not assessed, the assessment for each of such years, and the persons to whom assessed, for each year.

List of lands sold by United States.

§ 434. That the assessor may know what lands are subject to taxation, the governor must, from time to time, procure

such information as will show the lands in each county in the state, which have been sold up to the first day of April, in the year one thousand eight hundred and fifty-two, and up to the first day of April in each year thereafter; the name of the purchaser; the description of the tract; and the date of the sale; which must be registered in well bound books by the comptroller, and kept in his office.

Annual lists furnished judge of probate.

§ 435. In addition to the duplicate furnished by the comptroller to the several counties, under the 29th section of an act, entitled "an act to provide for the assessment and collection of taxes," approved sixth March, one thousand eight hundred and forty-eight; the comptroller must, by the first Monday in August in the year one thousand eight hundred and fifty-two, and by the first Monday in August in each year thereafter, furnish each judge of probate an additional register or statement, showing all lands in the county of such judge, which have been sold by the United States up to the first day of April in such year, and not embraced in any of the registers or statements previously furnished; the register or additional statement so furnished, must show the purchaser or grantee, description of the tract, and date of sale; and must, when received, be recorded in a book kept for that purpose, and the original carefully preserved in the office of the judge of probate.

Copies given to assessor.

§ 436. Such judges must, by the first day of September in each year, furnish copies from such registers and statements, showing all the lands in their respective counties, which have been sold up to the first day of April, the name of the purchaser or grantee, the description of the tract, and the date of the sale, to the assessors of their respective counties, who must see that each tract is properly assessed, unless exempt by law.

Arrangement of registers.

§ 437. For convenience of reference and comparison, such registers or statements, and copies, as provided for by the two preceding sections, must commence with the lowest number of sections, townships, and ranges, and be continued in regular numerical order.

Agents to make lists.

§ 438. To execute the provisions of section 434, the governor is authorized to make such contracts, and employ such agents as are necessary; to be paid by the warrant of the comptroller, on the certificate of the governor of the amount, and that such services have been correctly performed.

Comptroller to hire a clerk.

§ 439. For making out the registers and statements for the different counties, the comptroller is authorized to employ a person at not exceeding twenty cents a page, for each page of ordinary foolscap, and to issue his warrant on the state treasury therefor.

When court to sit to correct errors.

§ 440. On the second Monday in January in each year, the court of county commissioners of each county must sit for the purpose of examining and correcting the assessment books, and if from any cause a court is not then held, the probate judge must associate with him two householders of the

county, and proceed without delay to examine and correct the assessment; such householders to be paid from the county treasury two dollars for each day's service, on the certificate of the probate judge.

Books to be compared with registers, and errors to be corrected.

§ 441. Such courts and the assessors must carefully compare the books containing the assessment of real property, with the registers showing the lands which have been sold by the United States up to the first day of April in the preceding year; correct all errors in the valuation of property; and rectify all mistakes from assessments being made to the wrong person or otherwise.

When corrected, original books, and open to inspection.

§ 442. All corrections thus made, are to be plainly entered on the assessment books by the assessor; and such books, so corrected, are the original assessment books, and must remain in the office of the judge of probate, free to the inspection of all state officers and citizens of the county without charge.

What the books must show.

§ 443. The assessors must add up on each page of their assessment books, the whole number of each separate item of taxation entered on such page, and the aggregate amount of taxes assessed thereon; and such books must also show the whole number of each separate item of taxation entered therein; the aggregate amount of taxes assessed thereon; and the total amount of assessments in the county.

Abstract of books to be sent to comptroller.

§ 444. The judge of probate must, by the first day of May in each year, make out and forward to the comptroller a correct abstract from the assessment books, showing the total value, amount or number of the general items on subjects of taxation contained in such books; the aggregate amount of taxes on the value, amount, or number of each item extended into a column; and the total amount by the addition of the sums so extended of all taxes due the state from his county: which abstract must be made out and certified according to the forms furnished by the comptroller under the provisions of the ninth subdivision of section 365.

Statement of persons assessed, and the amounts assessed, &c.

§ 445. The assessor must make out from the original assessment books, a statement of the names of all persons against whom any tax has been assessed, and the amount of the tax against each; and in case of lands assessed to persons unknown, a list of the lands so assessed; describing such lands according to the provisions of section 425, and stating the amount of tax assessed upon each lot, tract, or parcel of land: which statement must be delivered to the judge of probate by the third Monday in February in each year; and after such statement is by them compared with the original assessment books, and corrected if necessary, it must be delivered to the tax collector by the first Monday in March in each year, with his certificate, that the same is a correct statement from the original assessment books, of the names of the persons against whom taxes have been assessed, and the amount assessed against each.

Corrected by judge of probate and given to tax collector.

446. The assessor cannot collect any taxes except from

persons about to remove from the county before the first Monday in March next, after his appointment; in which case* he must collect in the same manner as hereinafter provided for the collection of taxes by the tax collector, and must pay over the same to the tax collector of his county by such first Monday. Assessor not to collect; exceptions.

ARTICLE X.

The tax collector, his bond, and term of office.

Sec.
447. His term of office.
448. Vacancy, how and by whom filled.
449. The tax collector of 1851; his term of office and duties.
450. His bond, its amount, by whom approved, when filed.
451. Lien of the bond.

§ 447. The tax collector holds office for two years, commencing on the first day of March next after his election. Term of office.

§ 448. When a vacancy occurs from any cause, it must be supplied by the court of county commissioners as early as possible, and the person appointed holds for the unexpired term. Vacancy.

§ 449. The tax collector elected on the first Monday in August, one thousand eight hundred and fifty-one, holds office until the first day of March, one thousand eight hundred and fifty-four, and makes his assessments, returns, and payments under the laws in force previous to the adoption of this code, until the first day of March, one thousand eight hundred and fifty-three. Term and duties of tax collector elected in 1851.

§ 450. The tax collector, before entering on the duties of his office, must give bond in double the amount of the probable taxes of his county, to be determined by the judge of probate, which must be executed in duplicate parts, approved by such judge of probate; one part to be filed and recorded in his office; and the other to be filed by such tax collector in the comptroller's office. His bond; by whom approved. Where filed.

§ 451. Such bond operates from its execution, as a lien in favor of the state, on the property of the tax collector, for the amount of any judgment which is rendered against him in his official capacity, and on the property of his securities from the date of his default. Lien of bond.

---

* When the tax is likely to be lost, by removal or otherwise, it may be paid to the county treasurer. Acts 1851-2.

ARTICLE XI.

The duties of tax collector.

Sec.
452. When his duties commence.
453. List of duties.
454. Notice of collection in each precinct; fee for calling at residence.
455. List of insolvents and persons removed.
456. List examined and corrected.
457. But one return of insolvents, etc.
458. Taxes of persons removed, how collected.

When they commence.

§ 452. The duties of the tax collector, as defined by this code, commence on the first day of March, one thousand eight hundred and fifty-three.

§ 453. It is the duty of the tax collector:

To collect taxes.

1. To collect the taxes assessed against all persons and property in his county, after he receives the certified statement as provided for by section 445, and by the first day of September in each year; according to the provisions of law.

When to assess property.

2. To assess, as required under the provisions of this chapter, any property that has not been assessed, and to collect the taxes thereon.

Note errors of assessment.

3. To note in writing any errors made in the assessment of property.

Other duties.

4. To perform such other duties as are or may be required of him by law.

Notice of collection in each precinct.

§ 454. The tax collector must give fifteen days' notice of the time and place he will attend in each election precinct, for the purpose of collecting the taxes, by advertisement, at some public place therein; and if any person residing in such precinct fails to attend at the day and place, and pay his tax, and the collector visits his residence to collect the same, such collector may collect of such person for his own use fifty cents, if residing in the country, and twenty-five cents if in a town or village, to be collected as taxes.

Fee for call at residence.

Return insolvents and persons removed.

§ 455. Each collector must make a return in writing, and on oath to the judge of probate of his county by the first day of August in each year, showing the persons who have not property in his county, and the persons who have removed therefrom, not leaving property therein sufficient to pay the tax assessed against them.

Return to be examined.

§ 456. Such return must be examined by the court of county commissioners, at a court to be held on the second Monday in August in each year; if necessary corrected, and then approved; and the collector, on producing to the comptroller a certified copy of such return, is entitled to a credit on his books.

But one to be made.

§ 457. But one return of persons insolvent and removed, can be made by the tax collector.

§ 458. When any person against whom any tax has been assessed, has removed to any county in the state, without

paying or leaving property in the county in which such tax was assessed, to pay the same, the judge of probate of such county must issue an execution for the amount thereof, returnable to some regular term of the probate court within six months, and forward the same by private conveyance to the sheriff of the county to which such person has removed; and such sheriff must collect and return the same as in other cases, and pay over the amount to such judge of probate. How taxes collected when person removes from county.

ARTICLE XII.

Delinquent taxes, sales of property therefor, and redemption.

Sec.
459. Seizure and sale of property, when made.
460. Sale of slaves, how and where made.
461. Of real estate, how and where made.
462 } Certificate given purchaser. Cer-
463 } tificate assignable.
464. Bid in for state, when.
465. Surplus of sale.
466. Statement of real estate sold.
467. Penalty for failure.
468. Redemption of lands sold, how made and when.

Sec.
469. Of lands bid in for state.
470. Disposition of redemption money.
471. Redemption by married women, minors and lunatics.
472. Certain officers not to bid at sale.
473. Deed for lands sold; when made and by whom.
474. Sale good, though property not assessed to true owner.
475. Certificate of redemption.
476. Receipt of money by purchaser, releases title.
477. Penalties for selling after receiving taxes.

§ 459. All tax collectors are required from and after the first day of June in each year, to seize of the goods and chattels, or slaves, of any person who has not paid the taxes assessed against him by that time, sufficient to pay the amount thereof with the costs and expenses; and if such taxes, costs, and expenses are not paid within ten days after such seizure, he must sell to the highest bidder so much thereof as will pay the same; but no such seizure must be made until notice to make such payment has been given such person, if a resident of the county, either personally or by writing left at his usual residence or place of business. Seizure and sale of personal property for taxes.

§ 460. All sales of slaves for the payment of taxes must be made at the court house of the county, and notice thereof must be posted at the court house ten days before such sale; other personal property may be sold, on notice thereof, posted at some public place ten days before the sale, in the election precinct where it is seized. Sale of slaves; where made, notice.

§ 461. If slaves, goods, or chattels, cannot be found in the county out of which to make the taxes due, with the costs and expenses thereon, and in case the taxes assessed on real property to unknown owners are not paid by the first day of June in each year, the collector must proceed to advertise and sell the real estate assessed to such person or unknown owner, as follows: Sale of real estate.

Advertisement.

1. He must advertise such real estate in some newspaper published in the county in which the lands were assessed, once a week for eight successive weeks; and if no newspaper is published in such county, in the newspaper published the nearest to the court house of the county in which the assessment was made; and must also for the same length of time before such sale, post a notice thereof at the court house door of such county.

What it must contain.

2. Such advertisements and notice must contain a concise description of the lands assessed; the name of the person to whom assessed; or if to an unknown owner, it must be so stated; and the amount of taxes due, and all costs, including the expenses of advertising, must also be stated.

Cost of advertisement.

3. The costs of such advertisement must not exceed one dollar for any quantity of land assessed to the same person, in the same section, unless assessed in subdivisions less than forty acres; and no charge must be made against the state for lands improperly or incorrectly advertised; if the tax collector cannot procure such advertisements to be made in the proper paper at the price specified, he must post the notice required by this section at the court house door, and at four other public places in the county, the same length of time before such sale.

Sales; where made, and how conducted.

4. If the taxes, costs, and expenses are not paid by the day of sale, the tax collector must, between the hours of ten and twelve in the morning, at the court house door of his county, commence the sale of such real estate to the highest bidder, for cash, and continue the same from day to day, until enough of each parcel is sold to pay such taxes, costs and expenses, including the advertisement.

Parcels sold separately.

5. In the sale of real estate laid off into town lots, each lot or part of lot assessed, must be offered separately; other real estate by subdivisions, of not more than forty acres.

Bidder failing to pay resale made.

6. The purchaser of each parcel of land must pay for the same at the close of the sale, and failing so to do, such lands are to be resold, as if no sale had been made; and the person so failing, is guilty of a misdemeanor, and, on conviction thereof, must be fined not more than five times the amount of his bid.

Penalty.

Certificates of purchase.

§ 462. At the close of all sales of real property, or as soon thereafter as it can be conveniently done, the collector must make out and deliver to the purchaser a certificate of purchase, describing the land or lot sold; the amount of taxes, costs and expenses for which the same was sold; the date of the sale; and that the same was duly advertised; and if any person is the purchaser of more than one tract assessed to the same person, he may have the whole included in one certificate.

Assignable.

§ 463. Such certificate of purchase is assignable by endorsement, and an assignment thereof vests in the assignee, and his legal representatives, all the right and title of the original purchaser.

When bid in for state.

§ 464. If, on the sale of any real estate for taxes, the amount bid for lands assessed to the same person, or on any tract assessed to an unknown owner, is not sufficient to pay the taxes due and unpaid, assessed to such person, and the expenses thereon; or in case of an unknown owner, on such tract, and the expenses; the tax collector must, in such cases, bid off the same in the name of the state, and the certificate of purchase must be made to the state of Alabama, and delivered by the tax collector to the comptroller when he makes return of his taxes; and on failure to redeem the same as hereinafter provided, the title to such lands rests in the state.

Certificate.

Surplus of sale.

§ 465. If any property sell for more than the amount of taxes due, costs and expenses, the collector must, within five days after such sale, pay such surplus into the county treasury, for the use of the owner; and if he fails to make such payment, the owner may recover of him, and his securities, before any court having jurisdiction, five times the amount of such surplus.

Statement of real estate sold.

§ 466. The collector must also, within five days after the sale of any real estate under the provisions of this article, make out and deliver to the judge of probate of his county, a statement in writing, and on oath, showing the names of the purchasers; the purchase money; the lands sold to each purchaser; the amount of taxes and costs, including the advertisement; the name of the person to whom assessed, unless assessed to an unknown owner, in which case it must be so stated; and the date of the sale: which statement must be recorded in a book kept for that purpose, by such judge, which all persons are allowed to inspect, free of charge; and when any lands are redeemed, as hereinafter provided, an entry of such redemption, the name of the person, and the amount paid, must be entered against the tract or tracts so redeemed.

Recorded.

Penalty for neglect.

§ 467. Any tax collector failing to comply with the provisions of the preceding section, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Redemption of real estate.

§ 468. Real estate sold under the provisions of this article, and not purchased by the state, may be redeemed, any time before the expiration of two years from the date of sale, by paying to the judge of probate of the county in which such lands were sold, the amount of the purchase money, with interest thereon at the rate of twenty per cent. a year from the date of the sale, the costs of the certificate of purchase, all taxes on such lands which have accrued subsequently to the sale, unless such taxes have been paid to the collector, as may be shown by his receipt; and the sum of fifty cents to such judge; but the real estate of any infant, married woman, or lunatic, when sold for taxes, may be redeemed in a court of chancery, at any time within one year after the removal of such disability, upon the terms specified in this section, and payment of the costs in such court.

Certain persons excepted.

Redemption of lands bid in for the State.

§ 469. Lands purchased by the state may be redeemed by paying to the comptroller, at any time within two years after the sale, treble the amount of the taxes, costs, and expenses, for which such land was sold, and the sum of one dollar as a fee to the comptroller; or if belonging to an infant, married woman, or lunatic, on the same terms, by application to the court of chancery, at any time within one year after the removal of such disability, and payment of the costs of such application.

Redemption money paid to holder of certificate.

§ 470. In each case of redemption under section 468, the amount for which the lands were sold, the interest thereon, and the costs of the certificate of purchase, as in such section provided for, must be paid to the purchaser at the tax sale, his assigns, or legal representatives, by the judge of probate, on demand, and production of the certificate of purchase: and failing to make such payment, the person entitled thereto may recover five times the amount thereof, of him and his securities, before any court having jurisdiction; and such judge is also guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars.

Penalty for refusal.

Redemption to be made in all cases in ten years.

§ 471. The provisions of sections 468 and 469, in favor of minors, married women, and lunatics, can in no case extend to the redemption of lands for a longer term than ten years from the day of sale.

Certain officers not to bid at sales. Penalty.

§ 472. It is illegal for any tax collector, assessor, or judge of probate, in the county in which any real estate is sold for taxes, to bid at such sale, either directly or indirectly; and any such officer so bidding, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

When deed made to purchaser.

§ 473. At any time after the expiration of two years from the sale of any real estate for taxes, if the same has not been redeemed, the judge of probate of the proper county, on the production of the certificate of purchase, and the payment of his fees for the same, must execute, and deliver to the purchaser, his heirs, or assigns, a deed of conveyance for the real estate described in the certificate, or the portion of the same which has not been redeemed; such deed must contain the same recitals as the certificate of purchase; and the tracts of land which were sold as the property of the same person, to the same purchaser, at the same sale, must, if desired, be included in the same deed.

Recitals of deed.

Sale not invalid for assessment to another than the owner.

§ 474. No sale of real estate for taxes is invalid, on account of the same having been assessed to any other than its owner, if such real estate were in other respects sufficiently described; and the taxes, costs, and expenses, were unpaid at the time of the sale.

Certificate of redemption.

§ 475. When any real estate is redeemed, under the provisions of this article, the judge of probate must make out, and deliver to the person redeeming, a certificate specifying the amount paid, the lands redeemed, as whose property such lands were sold, and the date of sale, which certificate is presumptive evidence of the facts thus set forth.

§ 476. The receipt of the redemption money of any tract of land by the purchaser, operates as a release of all claim to such tract, under or by virtue of the purchase. Receipt of money by the purchaser.

§ 477. If any collector receives the taxes assessed against any person, or property, and knowingly sells any property for the payment of such taxes, he is guilty of a misdemeanor, and must, on conviction, be fined not less than two hundred dollars. Sale when taxes are paid. Penalty for.

ARTICLE XIII.

Tax on steamboats, &c., how collected.

SEC.
478. Rate of tax on river vessels.
479. By whom assessed and collected.
480. Tax collector to make demand, and if not paid, to seize and sell the boat, &c.
481. Tax how collected when boat is not seized.
482. Surplus of sale.

§ 478. There must be assessed, as hereinafter provided, on every steamboat, vessel, or other water craft engaged in the business of navigating the rivers of the state, for any period during the tax year, on each hundred dollars of the value thereof, and at that rate, twenty cents. Tax on steamboats.

§ 479. The tax imposed by the preceding section must be assessed and collected, by the tax collectors of Mobile and Montgomery counties, and of the counties bordering on the Tennessee and Coosa rivers. How assessed and collected.

§ 480. Such tax collectors must each year demand of the captain, agent, or person in charge of such steamboat, vessel, or water craft, if the taxes on the same have been paid, and on failure to produce a receipt therefor, by a tax collector, authorized by the preceding section to collect such taxes, must at once proceed to assess the same, and if not paid on demand, to collect such taxes, by the seizure and sale of such steamboat, vessel, or water craft, her tackle, apparel and furniture, or an amount sufficient to pay the taxes, expenses for keeping, and other costs, in the manner as prescribed for the sale of slaves, in the preceding article. Tax to be demanded. If not paid, boat seized and sold.

§ 481. If such steamboat, vessel, or water craft, with her tackle, apparel, and furniture, or so much as is necessary, cannot be seized, the tax collector must make the amount of the taxes assessed, and all costs and expenses, by seizure and sale, of enough of the real or personal property of the captain, owner, agent, or person in charge of such steamboat, vessel, or water craft; to be sold as other property of the same kind, for the non-payment of taxes. How collected when boat not seized.

§ 482. The surplus on the sale provided for by the two preceding sections, over the amount of the taxes, expenses, and costs, must be by the tax collector paid into the county Surplus of sale.

treasury, for the use of the owner, within five days after the sale, under the same penalties given against the assessor by the provisions of section 465.

ARTICLE XIV.

Payment of taxes and licenses.

SEC.
483. Notaries, clerks of circuit court, and commissioners, when to make returns and payment.
484. Judge of probate's return, what to embrace.
485. Mobile tax collector to make monthly deposits in bank.
486. When officers must pay over money to treasurer.

Sworn return of circuit clerks, notaries and commissioners.

§ 483. Notaries public, clerks of the circuit court, and commissioners of deeds for other states, must, by the second Monday of July in each year, make returns of, on oath, and pay to the judges of probate of their respective counties, the amount received by them for the state, up to the first day of such month.

Of judge of probate.

§ 484. The judges of probate must, by the second Monday of August in each year, make returns of, on oath, and pay to the tax collectors of their respective counties, the amount received by them on account of the state, for licenses, or upon any other account, up to the first day of such month; such return must show to whom, and for what, each license was granted, and the amount received therefor; the amount received from any other person, and for what; and a duplicate of such return must be transmitted to the comptroller by the first day of September in each year.

Mobile collector to make deposits monthly.

§ 485. The tax collector of Mobile county must, after the time for commencing his annual collections, deposit at the end of every thirty days, in the Bank of Mobile, to the credit of the state treasurer, the amount collected by him up to the date of such deposit, deducting therefrom the fees and allowances made him by law; taking triplicate certificates therefor, one of which he must forward within five days to the comptroller of public accounts, one to the state treasurer, and the other he must keep as his own voucher.

When revenue to be paid over by officers.

§ 486. Every tax collector, and every other officer, having money, belonging to the state, must, unless otherwise directed by law, pay into the state treasury such money, by the first Monday of September in each year, deducting therefrom the fees and allowances made him by law; and failing to make such payments, must be proceeded against as a defaulter, according to the provisions of Article 5, Chapter 3, Title 2, Part 3.

Proceedings on default.

ARTICLE XV.

Miscellaneous provisions.

Sec.	
487.	State's lien for taxes.
488 }	What funds receivable. Tax collector to pay over specie received.
489 }	
490.	Fine for failure to pay over the specie.
491.	Governor to forbid receipt of notes of all banks not paying specie.
492.	Death of tax collector, administrator to pay over.
493.	Conversion of the state revenue, how punished.
494.	Neglect of any duty under this chapter, a misdemeanor.

Lien for taxes.

§ 487. On steam boats, vessels, and water craft, subject to taxation, the state has a preference lien against all persons, for the taxes assessed, costs, and expenses; and a lien on the slaves, goods and chattels, and lands of any person against whom taxes are assessed, for the amount of the same, costs and expenses, from the first day of September in the year of the assessment.

Funds receivable.

§ 488. All taxes must be paid in gold and silver, warrants on the state treasury, bills of specie paying banks of this state, or of the State Bank and its branches, or treasury notes of the United States.

Specie collected to be paid over.

§ 489. The tax collectors must pay into the state all specie, and specie funds collected by them, without exchanging the same for other funds.

Penalty for failure.

§ 490. A violation of the preceding section is a misdemeanor, punishable, on conviction, by a fine of not less than one hundred, or more than five hundred dollars.

Failure of bank to pay specie.

§ 491. The governor, on receiving satisfactory information of the failure of any bank within this state, to pay specie for its bills, must direct the comptroller to issue circulars to the several tax collectors of the state, advising them of such failure.

Death of tax collector.

§ 492. In case of the death of any tax collector, his executor or administrator must, within two months after the grant of letters testamentary, or of administration, settle all the unsettled accounts of such officer with the comptroller, and pay into the state treasury all moneys received by such tax collector, on account of the state, deducting therefrom all fees, commissions, and allowances to which he is by law entitled.

Conversion of state revenue.

Penalty.

§ 493. If any assessor, collector, clerk, tax collector, or other officer or person, knowingly converts or applies any of the state revenue to his own use, or the use of any other person, he must, on conviction thereof, be fined in any sum the jury may assess, and be imprisoned in the penitentiary, not less than two, or more than five years, one or both, at the discretion of the jury.

Neglect of duty not provided for.

§ 494. If any officer, or person on whom any duty is imposed by any section of this chapter, willfully neglects to perform such duty, in case no other provision has been made for the punishment of such neglect, he is guilty of a misdemeanor.

ARTICLE XVI.

Compensation to assessors and other officers.

Sec.		Sec.	
495.	Per centage on assessments and collections.	498.	Fee for assessing property with arrears of taxes.
496.	Tax collectors' mileage to seat of government.	499.	Pay of county commissioners.
497.	Fees for seizures and sales of property.	500.	Pay of judge of probate for tax services.

Pay of assessor and collector.

§ 495. The tax collectors and assessors are entitled to compensation for their services under this chapter, at the rate of ten per cent. on the first five hundred dollars of state taxes by them respectively assessed or collected; on the next five hundred dollars, five per cent.; on the next thousand dollars, two and one half per cent.; and on all over two thousand dollars, two per cent.*

Tax collector's mileage.

§ 496. The tax collector is also entitled to six dollars, and at that rate, for every hundred miles travel, to be estimated from the court house of his county to the seat of government, by the direct mail route, if there be one, and if not, by the land route usually travelled, for once in each year, going to and returning therefrom for the purpose of making his returns, and paying the taxes.

Fees for seizure and sale of property.

§ 497. For every certificate of purchase, the tax collector is entitled to fifty cents, to be paid by the purchaser; for each seizure of personal property, fifty cents; and for each sale thereof, five per cent. on the amount of the same; and for assessing and collecting on steam boats, vessels, and other water craft, six per cent. on the amount collected.

For assessment of property in arrear.

§ 498. For assessing taxes on property which has escaped taxation for any previous year, the assessor is also entitled to twenty per cent. on the amount of the tax when collected.

Pay of county commissioners.

§ 499. Each member of the court of county commissioners, except the judge of probate, is entitled to receive one dollar and fifty cents for each day's service, imposed on them under the provisions of this chapter, to be paid out of the county treasury upon the certificate of the judge of probate.†

Of judge of probate for tax services.

§ 500. The judge of probate is entitled to one dollar on each license granted by him, except marriage licenses, to be paid by the person taking out the license; one dollar for each deed, on a sale of land for taxes, to be paid by the grantee; and for all other services rendered under this chapter, to such compensation as may be allowed by the court of county commissioners, to be paid out of the county treasury.

---

* The tax collector pays the assessor his commissions, taking from him duplicate receipts, one to be received by the comptroller, if correct.

Acts 1851–2, page 5, sec. 6.

† The compensation allowed the judge and commissioners, while closely and necessarily engaged in examining the books and performing the other duties in connection with the revenue, is two and a half dollars per diem, and mileage at five cents per mile—and the judge and one commissioner may perform all the duties, if a fuller attendance is not deemed indispensable by the court.

Acts 1851–2, page 5, sec. 5.

Title 8.

OF THE PUBLIC PROPERTY OF THE STATE.

CHAP. 1. School lands.
" 2. University lands and site.
" 3. Salt springs.
" 4. The public arms.
" 5. Other public property.

CHAPTER I.

SCHOOL LANDS.

ARTICLE 1. School lands, school trustees, and surveys.
" 2. Lease of school lands.
" 3. Sale of school lands.

ARTICLE I.

School lands, school trustees, and surveys.

SEC.
501. School lands, what, and in whom vested.
502. Townships incorporated.
503. Trustees to be elected, when, and by whom.
504. Inspectors of election appointed—notice of election.
505. Inspectors' clerks and returning officers sworn.
506. Proceedings if inspector absent.
507. In case of a tie vote, decided by lot.
508. Returns made to the judge of probate.
SEC.
509. Trustees, when elected to appoint inspectors.
510. Vacancy in the board; how supplied.
511. Appointment of trustees, on failure to hold elections.
512. Term of office—who eligible to the office.
513. Township lying on two counties.
514. Trustees' oath of office.
515. Trustees' bond.
516. Majority of the board acts.
517. Township lands to be surveyed.
518. Costs paid out of school funds.

School lands.

§ 501. School lands, within the meaning of this code, are sections numbered sixteen in every township, granted by the United States for the use of schools in the township, and such other lands as may have been granted any township for the use of schools; and all school lands are vested in the state, in trust to execute the objects of the grant.

Townships incorporated.

§ 502. The inhabitants of each township in the state are incorporated by the name of "Township ——, in Range ——," according to its number by the surveys of the United States.

Trustees elected.

§ 503. On the first Saturday in January, one thousand eight hundred and fifty-three, and every four years thereafter, an election is to be held in every township in the state, by the white male inhabitants thereof over twenty-one years of age, for the election of three school trustees.

Inspectors.

§ 504. The judge of probate in each county must, twenty days before the first election, to be held under the provisions of the preceding section, appoint three inspectors for each township in his county; the sheriff must notify such inspectors, and also give notice of such election by advertising the same at three public places in each township, two days before the day of election.

Notice of election.

Returning officers.

§ 505. The inspectors appoint returning officers and clerks, and hold the election. They must, before opening the polls, take an oath, which may be administered by one to the other, to conduct the election fairly.

Inspectors absent.

§ 506. If any inspector fails to attend, another may be appointed by those attending; and if no inspector attends, any other freeholders or householders of the township can act.

Tie vote.

§ 507. In case of a tie between two or more persons, the inspectors must decide between them by lot.

Returns.

§ 508. The returns of such election must be made to the judge of probate, certified by the inspectors.

Inspectors after first election.

§ 509. After the first election, the inspectors are to be appointed, and notice given by the trustees of the township.

Vacancy in trusteeship.

§ 510. Vacancies by death, resignation, or removal from the township, are to be supplied by the court of county commissioners, and the person appointed holds for the unexpired term.

Failure to elect.

§ 511. If in any township there is no election held, the court of county commissioners must appoint trustees for such township, who hold until the next election day, and until their successors are qualified.

Who eligible; term of office.

§ 512. The trustees hold office for four years, and until their successors are qualified, and none but a freeholder or householder of, and a resident in, the township, are eligible.

Township in two counties.

§ 513. When a township is divided by a county line, it is to be taken for all the purposes, and all other matters in relation to school lands of this chapter, as included in the county, in which the greater portion of such township lies.

Trustees' oath.

§ 514. Each school trustee, before entering on his duties, must take an oath that he will, to the best of his ability, discharge his duty as school trustee of township ——, range ——, without partiality or favor; which oath must be filed in the office of the judge of probate of his county.

Bond.

§ 515. He must also give bond, with surety, payable to the state of Alabama, in a sum to be determined by the judge of probate, equal to the value of the school lands, or the amount of school funds of his township, conditioned to discharge his duties faithfully, so long as he continues in office, or continues to discharge any of such duties; which bond is to be approved by the judge of probate, and filed in his office.

Majority acts.

§ 516. The acts of a majority of school trustees, or of the one acting, if there is but one, are valid as if done by all.

Land surveyed.

§ 517. If the school lands belonging to any township are unsold, the trustees, if the same has not been done, must have the same surveyed, and laid off in lots containing not less than forty, or more than one hundred and sixty acres; have two plats of survey made, distinguishing each lot by a number marked thereon; one of which is to be kept by the trustees, and the other, certified by them, returned to the judge of probate.

Cost of survey.

§ 518. The expenses of such plats and surveys are to be paid out of the school funds, as the same is received by the trustees.

ARTICLE II.

Lease of school lands.

Sec.		Sec.	
519.	Timber lots reserved, balance	523.	Duties of lessee; timber lots,
520.	leased, terms, &c.	524.	how used.
521.	Payable to township, leases made	525.	Penalties for taking timber or
522.	by auction, notice.	526.	trespassing.

Timber lots reserved.

§ 519. The trustees, after the surveys and plats provided for by the preceding article, may select such lots as they think proper, to reserve from cultivation, for the benefit of the timber thereon, and must mark the same "Reserved," on the plat thereof.

Lands leased.

§ 520. The trustees may lease, for not exceeding five years, the lots so laid out and not reserved; may stipulate for such improvements as they deem expedient, and require, if they think proper, security for rents and improvements; the rent is to be paid annually, but in case of improvements, they may stipulate for the rents to commence after the commencement of the lease.

Notes payable to township.

§ 521. All notes, bonds, and contracts, for the lease of school lands, are to be made payable to the township by its corporate name.

Leased by auction.

§ 522. All school lands must be leased at some place in the township, at public auction; and at least six weeks' previous notice must be given, by advertisement, designating the time, and place, at three public places in the township; and such other notice as the trustees deem expedient.

Notice.

Duties of lessee.

§ 523. The lessee is bound to treat the land, houses, and improvements, in a careful and husbandlike manner, to commit no waste; and must comply with such further restrictions as the trustees deem expedient to insert in the lease; and if such lessee, or any person claiming under him, commit waste, fail to pay the rent, or to comply with any other stipulation, the trustees have the right to declare the lease forfeited.

Timber lots when used by lessees.

§ 524. The lots reserved for timber, are for the common benefit of the lessees of the other lots; but no timber must be cut down, injured, or destroyed, as long as there is sufficient on the other lots, which the trustees are to determine; and the lessees must in no case cut down, injure, or destroy such timber, without permission from the trustees, which may be given on such terms as they think proper, having a due regard to the interest of their townships.

Penalty for taking timber.

§ 525. Any person who, without authority, cuts down, injures, or destroys, any tree on school lands, shall forfeit and pay for every such tree, ten dollars; to be recovered before any court having jurisdiction, in the corporate name of the township; and every trespasser on school lands is guilty of a misdemeanor, and, on conviction, must be fined not less than three times the amount of the injury occasioned by such trespass.

For other trespass.

Fines; how disposed of.

§ 526. All fines and forfeitures under the preceding section, are to be paid into the state treasury, and added to the principal of the school fund of the township.

ARTICLE III.

Sale of school lands.

SEC.
527. Sale of school lands only made after election.
528. } Inspectors sworn, absent inspect-
529. } ors.
530. } Election, when opened; vote,
531. } how taken.
532. If sale agreed on, survey made, and minimum price fixed.
533. } Plat to be free for inspection,
534. } notice of sale.
535. } Mode of sale, terms; this is direct-
536. } ory only.
537. Terms not complied with, resale at risk of bidder.

SEC.
538. } Certificate of purchase, effect of
539. } certificate.
540. Title reverts, if payments not made.
541. Notes, when and where filed by trustees.
542. By judge of probate; penalty for failure.
543. Fines go to township.
544. Patent issues on payment of price, &c.
545. Comptroller certifies payment.
546. Trustees to institute suits; counsel, how paid.

Election; when held.

§ 527. The trustees of any township may, on giving twenty days' notice, by advertisement, at three of the most public places therein, hold an election to ascertain the sense of the township, respecting the sale of school lands belonging thereto, and may appoint the place where such election is to be held, and three inspectors to manage the same.

Inspectors.

§ 528. The inspectors, before holding such election, must take an oath to conduct the same fairly, which may be administered by one to the other, and they may appoint clerks.

Idem.

§ 529. If any inspectors are absent, those present may supply their places, and if none attend, any three freeholders or householders of the township may act.

Election.

§ 530. The polls are to be opened at eleven in the morning, and closed at five in the afternoon.

Manner of voting.

§ 531. The voters must write upon their tickets "sale" or "no sale," deposit them in the ballot box, and the inspectors, after ascertaining the result, must certify the same to the trustees.

Sale agreed on.

§ 532. If on such election, there is a majority of the white male inhabitants of the township, over twenty-one years of age, voting in such election, in favor of a sale, the trustees are to have the lands surveyed in lots, so as to command the highest price; have a plat of such survey made; and being sworn fairly to value such lots, must fix a minimum price upon each.

Survey made and minimum fixed.

Plat, &c,, for inspection.

§ 533. Such plat, with the minimum price marked upon each lot, is to be kept by one of the trustees free to the inspection of all persons desiring to examine the same.

Notice of sale.

§ 534. As soon as the lands are surveyed, the trustees must give thirty days' notice of the time and place of sale by advertisement, at three public places in the township, and in such other mode as they think proper.

Auction sale.

§ 535. On the day appointed for the sale, between the hours of eleven in the morning and two in the afternoon, each lot must be offered separately, and sold at public auction to the highest bidder above the minimum price, on a credit of one, two, three, and four years, in equal annual installments, with eight per cent. interest from date; the purchaser giving his notes therefor with two or more securities, approved by the trustees, and payable to the state of Alabama for the use of township ——, range ——, designating it by its numbers.

Terms.

Provisions directory.

§ 536. The provisions of this article, in relation to the sale of school lands, must be construed as directory only.

Resale.

§ 537. If any one fails to give his notes and security as required by section 535, the lot is advertised and resold as if no sale had been made; the first purchaser being responsible for the difference between his bid, and the amount bid for the lot at the subsequent sale, if less than the amount bid at the first sale.

Certificate of purchase.

§ 538. The trustees, on the execution of the notes, must give to the purchaser a certificate of purchase, showing the quantity of land in acres, describing the lots purchased, and specifying the amount of the purchase money.

Effect of certificate.

§ 539. Such certificate conveys to the person therein named, his heirs or assigns, a conditional estate in fee, to become absolute on the payment of the purchase money and interest; and which reverts to the state for the uses originally granted, in the following cases:

When the land reverts.

1. When all the notes have become due, and the makers have left the state or died insolvent.

2. When a recovery on such notes is defeated, by any defence avoiding the contract of sale.

3. When a recovery is had against all the makers, and execution has been returned, no property, by the proper officer of the county in which the township lies; or when judgment is had, and execution returned against any one or more of such makers, no property, the others having left the state or died insolvent.

Revests without recovery.

§ 540. No proceeding is necessary to revest the title in the state on the happening of the events specified in the preceding section; but such lands may be recovered in the name of the state for the use of the township, against any person in possession of the same, upon proof of the facts.

Notes to be deposited with judge of probate.

§ 541. All notes for the sale of school lands, must be deposited by the trustees with the judge of probate of their county, within six months after the sale, who must give his receipt for the same; and failing to make the deposit within the time prescribed, each of the trustees forfeits the sum of one hundred dollars, one half to the person suing for the same, the other to the state for the use of the township.

Notes sent comptroller by judge of probate.

§ 542. The judge of probate receiving any notes taken for school lands, must within six months deposit the same in the office of the comptroller, taking his receipt for the same; and failing to make the deposit within the time herein required, incurs the same penalty as specified in the preceding section, recoverable by any person suing for the same; one half to the use of such person, and the other to the state for the use of the township; and on the trial, the certificate of the comptroller, as to such failure, is presumptive evidence thereof.

Penalty.

Fines go to the school fund.

§ 543. The amount received by the state upon recoveries had under the two preceding sections, is to be added to the principal of the school fund of the township.

Patent.

§ 544. A patent issues on the payment of the purchase money, to the purchaser, his heirs, or assigns; and when the patent is to the heirs, it vests a title in all persons entitled to claim in that capacity, under the provisions of this code.

On certificate of comptroller.

§ 545. No patent must issue except on the certificate of the comptroller, that the whole amount of the purchase money specified in the certificate, with all interest thereon, has been paid.

Suits.

§ 546. The trustees of any township may direct suits at law or equity, in all cases affecting the interest of such townships; the counsel fees to be paid by the trustees out of the interest of the school fund of such township.

CHAPTER II.

UNIVERSITY LANDS AND SITE.

SEC.
547. Trustees may sell lands.
548. May apply proceeds of lands and interest of fund to buildings, &c.

Lands; how sold.

§ 547. The trustees of the University of Alabama are authorized to dispose of any of the university lands granted by the United States, remaining unsold, so as best to promote the interests of the institution.

Buildings erected.

§ 548. Such trustees have also authority to control the site selected for the university, and to erect such buildings thereon as they deem necessary; but in no case to exceed the proceeds derived from the lands in the preceding section mentioned, and the income derived from the university fund, and from the institution.

CHAPTER III.

SALT SPRINGS.

SEC. 549. Salt springs may be leased by the governor.

§ 549. The governor may lease the salt springs and lands granted to the state, under the second clause of the sixth section of the act of congress of second March, one thousand eight hundred and nineteen, to the best advantage in conformity with the provisions of the grant. Salt springs.

CHAPTER IV.

THE PUBLIC ARMS.

SEC.
550. Governor to appoint places of deposit of arms, &c.
551. Quartermaster general has custody of public arms; his duty as to their security and distribution.
552. When governor may order distribution.
553. Brigade quartermaster reports to quartermaster general.
554. Quartermaster general reports to adjutant general.
555. Adjutant general to governor.
556. Penalties for failure to report.

§ 550. The basement rooms of the building formerly occupied as the state capitol at Tuskaloosa, and such other places as may be selected by the governor, are to be used, under the direction of the quartermaster general, as a place of deposit for the arms and accoutrements which may be received from the United States. Places of deposit.

§ 551. The quartermaster general must ascertain the condition and situation of the public arms heretofore distributed; must from time to time examine the bonds given therefor, and cause to be deposited in such places as may be designated by him, any portion of the same not kept in good order, or for which there is not a good and sufficient bond; or he may authorise in writing any legally organised volunteer company to take possession thereof, on the commander of such company executing a bond in an amount to be fixed, and with security to be approved by him, payable to the state, and conditioned to restore such arms to the quartermaster general, on his requisition; which bond must be filed and kept in the office of such quartermaster general. Custody of arms. Furnished volunteers.

§ 552. In case of insurrection, invasion, rebellion, or imminent danger, the governor may order such distribution of the public arms as the public safety requires, giving notice of such order within ten days thereafter to the quartermaster general. When distributed by governor.

§ 553. Each brigade quartermaster must examine into, and report the condition and number of the public arms and Report of brigade quartermaster.

accoutrements within their respective brigades, by the first Monday of October, in each year, to the quartermaster general of the state.

Of quartermaster general.

§ 554. The quartermaster general must, twenty days before each regular session of the general assembly, report to the adjutant general the number and condition of the public arms and accoutrements in the places of deposit provided by sections 550 and 551, and in each brigade.

Of adjutant general.

§ 555. The adjutant general must, ten days before each regular session of the legislature, report to the governor the number and condition of the public arms and accoutrements throughout the state, from the reports made to him under the two preceding sections.

Penalty for not reporting.

§ 556. On failure of any of the officers to make the reports as, and within the time required by the three preceding sections, the officer so failing is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars.

CHAPTER V.

OTHER PUBLIC PROPERTY.

SECS. 557–8. Governor has control of public property not otherwise provided for—the word property does not include money, &c.

State property.

§ 557. All property belonging to the state, not otherwise provided for by law, is under the control of the governor.

What it comprehends.

§ 558. The word "property," in this chapter, does not include money, or evidences of debt.

Title 9.

OF THE JUDICIAL ORGANIZATION OF THE STATE.

CHAPTER I.

THE JUDICIAL POWER, IN WHOM VESTED, AND GENERAL PROVISIONS.

SEC.
559. Judicial power, where vested.
560. Judge incompetent to try certain cases.
561. Power of courts to inflict summary punishment.
562. Other powers of courts.
563. Punishments for contempt of court.
564. Records and papers of courts not to be removed from county.
565. Minutes to be read in open court, &c.

§ 559. The judicial power of the state is vested in the sen-

ate, sitting as a court of impeachment; the supreme court; chancery courts; circuit courts; courts of probate; courts of county commissioners; justices of the peace: such other inferior courts as have been or may be established by law, not to consist of more than five members; and such persons as are specially invested with powers of a judicial nature. Where vested.

§ 560. No judge of any court, chancellor, county commissioner, or justice, must sit in any cause or proceeding, in which he is interested, or related to either party within the fourth degree of consanguinity or affinity, or in which he has been of counsel, without the consent of the parties entered of record, or put in writing, if the court is not a court of record. Judges not to try certain cases.

§ 561. The power of the several courts of this state to issue attachments, and inflict summary punishment for contempts, does not extend to any other cases than Summary powers of courts.

1. Disrespectful, contemptuous, or insolent behaviour in court, tending in anywise to diminish or impair the respect due to judicial tribunals, or to interrupt the due course of trial. The same.

2. A breach of the peace, boisterous conduct, violent disturbance, or any other act calculated to disturb or obstruct the administration of justice, committed in the presence of the court, or so near thereto as to have that effect. The same.

3. The misbehavior of any officer of the court, in their official transactions, or the disobedience or resistance of any officer of the court, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command thereof. The same.

4. Deceit, or abuse of the process or proceedings of the court, by any person or party, or any unlawful interference with the process or proceedings of a court. The same.

5. Refusing to be sworn, or to answer, either in court, or before the grand jury, any lawful question as a witness or garnishee. The same.

6. When summoned as a juror in a court, improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party, or other person, in respect to it, without immediately disclosing the same to the court. The same.

7. Conversing with a juror, knowing him to be such, in relation to the merits of any action which he is engaged in the trial of; or supplying any juror with refreshment of any kind except water, during the time he is engaged in the trial of any cause, without leave of the court. The same.

§ 562. Every court has power Power of courts.

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance, to its proceedings. Preserve order.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority. Before delegated authority.

Enforce obedience.

3. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding therein.

Control of officers.

4. To control, in furtherance of justice, the conduct of its officers, and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

Administer oaths.

6. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

Amend its process.

5. To amend and control its process and orders, so as to make them conformable to law and justice.

Contempts.

§ 563. For the effectual exercise of the powers conferred by the preceding section, the court may punish for contempt in the cases provided for in this chapter.

Records not to be removed.

§ 564. No records or papers of any court must be removed out of the county, except in cases of invasion or insurrection, whereby the same may be endangered, or unless by order of the court.

Minutes read.

§ 565. The minutes of the court must be read each morning in open court, and, on the adjournment of the court, must be signed by the judge.

CHAPTER II.

THE SUPREME COURT AND ITS OFFICERS.

ARTICLE 1. The supreme court and its judges.
" 2. The marshal.
" 3. The clerk.
" 4. The reporter.

ARTICLE I.

The supreme court and its judges.

SEC.
566. The powers of the court vested in the judges.
567. The chief justice.
568. The jurisdiction of the court.
569. Judge may issue writs of injunction and supersedeas.
570. Terms of the court—regular and special.
SEC.
571. Provision, when judges absent.
572. When judges incompetent to try case.
573. When all but one incompetent.
574. Salaries of judges.

Judges.

§ 566. The powers of the supreme court are vested in, and its duties performed by three judges, who are elected by the joint vote of both houses of the general assembly, as often as may be necessary, and are conservators of the peace throughout the state.*

---

* The number of judges was increased by the act of 1851'–2, to *five*.

§ 567. Such judges, or a majority of them, may hold such court, and must appoint one of their own number chief justice, which appointment must be entered of record, and when he is absent, the oldest judge present must act in his place. Chief justice.

§ 568. The supreme court has authority Authority.

1. To exercise appellate jurisdiction coextensive with the state, under such restrictions and regulations as are or may be prescribed by law. Appellate jurisdiction.

2. To exercise original jurisdiction in the issue and determination of writs of quo warranto, and mandamus, in relation to matters in which no other court has jurisdiction. Original. 9 Por. 383; 1 Ala. 15, 95, 98, 342, 688; 8 Ala. 424.

3. To issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of inferior jurisdictions. Superintendance of other courts 9 Por. 383, 1; Ala. 95, 98 2 Ala. 35; 8 Ala. 424.

4. To establish rules of practice in such court, and all other courts of record in the state. Rules of practice.

5. To direct the transcripts brought up to the court to be made up of a uniform size, and of such form that they can be conveniently bound. Transcripts.

6. To punish for contempts by the infliction of a fine as high as one hundred dollars, and imprisonment not exceeding ten days, one or both. Contempt.

7. To exercise such other powers, not contrary to the constitution, as are or may be given to such court by law. Other powers.

§ 569. The judges of the supreme court have each of them authority to issue writs of certiorari, injunction, and supersedeas, subject to the limitations prescribed by this code, as judges of the circuit courts are authorized to grant the same. Authority of judges.

§ 570. The regular sessions of the supreme court commence on the first Monday in January and June, in each year, and must continue from day to day, Sundays excepted, until the business thereof is completed, but a special session may be holden by the direction of the court, when the public interest requires. Terms of the court.

§ 571. One judge, or the marshal of such court, may adjourn the court from day to day, until the sixth day, on which, if a majority of the judges are not present, the court must be adjourned to the next stated term, to which term all cases are continued. Judges absent term adjourned.

§ 572. When all the judges of the supreme court are disqualified from deciding any cause or proceeding pending therein, they must certify the same to the governor, who must direct a commission to any three judges of the circuit court to hear and determine such cause; and the judges so commissioned must hear and determine the same, and their judgment or decree is entered of record, as other judgments or decrees of such supreme court, and has the same force and effect. If judges disqualified.

§ 573. In any cause or proceeding in said court, when any two of the judges are disqualified from sitting, the other judge must hear such cause, and if of the opinion that the If one only qualified.

judgment should be affirmed, his judgment is of the same force and effect as if it were the judgment of a majority of the court; but if of opinion that the judgment should be reversed, he must certify the same to the governor, who must associate with him two circuit judges or two chancellors, for the decision of such cause; and such three judges must hear and determine the same.

Salary. § 574. The annual salary of each judge of the supreme court is twenty-two hundred and fifty dollars.

ARTICLE II.

The marshal.

Sec.		Sec.	
575.	Marshal appointed by court—term of office—duties.	576, 577.	Oath and compensation.

Marshal. § 575. A marshal of the supreme court is appointed by the judges, who holds his office during the pleasure of, and performs such duties as are required by the court, not inconsistent with law.

Oath. § 576. Such appointment must be entered on the minutes of the court, and the person so appointed must take an oath to discharge the duties required of him by law.

Pay. § 577. He receives for his compensation one hundred and fifty dollars a year, and the comptroller must issue his warrant on the state treasury for one half the amount, at the end of each regular term of the court, upon the certificate of the chief justice that he has discharged the duties required of him.

ARTICLE III.

The clerk.

Sec.		Sec.	
578, 579.	How appointed and removed, term of office, his bond.	582.	His duties.
580.	Additional bond, when required.	583, 584.	What constitutes the record; records to be bound in books.
581.	His office, and office hours.		

Clerk appointed. § 578. A clerk of the supreme court is appointed by the judges, and holds his office for five years, removable at any time for cause, to be determined by the judges, and entered on the minutes.

Bond. § 579. Before entering on the duties of his office, he must give bond, with security, in the sum of five thousand dollars, to be approved by the chief justice of the supreme court, and recorded in the office of secretary of state.

§ 580. He must give additional bond, on the requisition of such chief justice, to be made whenever the public interest requires, and failing so to do, within the time fixed by such chief justice, his office is vacated. Additional bond.

§ 581. He must keep his office in the capitol, open for the transaction of business, on every day except Sunday, the fourth day of July, Christmas, and the first day of January, from nine in the morning until four in the afternoon. Office and office hours.

§ 582. He has authority to administer oaths and take affidavits; and it is his duty: Duties.

1. To issue and sign all writs and process of every description, issued under the authority of the court. Attest writs, &c.

2. To keep in regular order the papers, dockets, and records of such court. To keep the papers.

3. To keep an appearance, trial, motion, and execution docket, under such rules as are prescribed by the court. Dockets.

4. To enter, from day to day, the judgments and proceedings of the court. Enter judgments, &c.

5. Within five days after the adjournment of each court, to issue certificates of reversal and affirmance, on all judgments rendered by the court, and deposit the same in the post office, directed to the proper officers of the proper counties, with the name of the case, and the character of the process, endorsed on the envelope; and in all cases where the judgment of any court is reversed, in whole or in part, a copy of the opinion of the court must accompany the certificate of reversal.* Certificates of affirmance or reversal.

6. At the end of each term to have the transcripts of the records of all the cases decided at such term, with a copy of the orders made in each case, and the entry of the final judgment, bound in strong binding, and lettered so as to show the term at which the decisions were made. Records to be bound.

§ 583. Such transcript orders and entry of the final judgments, constitute the record in each case. Idem.

§ 584. When any of the records are bound according to the provisions of this article, the account for the same, approved by any two of the judges, must be paid out of the state treasury, on the warrant of the comptroller. Pay for binding.

---

* The act of 1851–2 requires the clerk to send to the clerks below certificates of reversal or affirmance, and copies of opinions if reversed, immediately after the business of each division is disposed of; and if a rehearing has been granted after such certificate is forwarded, the clerk of the supreme court certifies it to the clerk of the court below, which certificate operates as a supersedeas, without impairing the obligation of the sureties.

ARTICLE IV.

The reporter.

SEC.
585. How appointed.
586. Reports, how published and paid for.
587. Compensation of reporter.
588. If no reporter employed, judges to report decisions.
589. Governor to contract for printing, &c.
590. } Reports, how disposed of; pay
591. } for printing, how made.
592. Surplus of sales, how disposed of.
593. Name of judge who tried the case below, to be published.
594. State copies of reports, how distributed.
595. Copies sent to other states.

Reporter.

§ 585. The judges of the supreme court may from time to time appoint a reporter of the decisions of such court.

Contract for printing and binding reports.

§ 586. They are authorized to contract for the printing and binding of the reports, and for this purpose the comptroller must, under their direction, draw on the treasury for not exceeding seventeen hundred dollars, for each volume of reports containing nine hundred pages, including the index, in type and pages of the size now used in printing the reports; which sum so drawn for, must be paid by the treasurer, upon the certificate of the secretary of state, that one hundred and fifty copies of such volume, neatly bound, have been deposited in his office for the use of, and free expense to the state.

Pay of the reporter.

§ 587. To compensate the reporter, such judges may contract to allow, or transfer him, the proprietorship of the copy right of the volumes reported by him, and the exclusive right to sell the same, for the term of fourteen years, for his own use; upon the condition, however, that he does not sell the same at a higher price than five dollars a volume, under penalty of forfeiting the proprietorship of the same.

When no reporter employed.

§ 588. If no person can be employed to report such decisions, on the terms specified in the two preceding sections, the judges of the supreme court must prepare for publication their decisions, in volumes of at least nine hundred pages, including the index, and must secure the copyright for the use of the state.

Governor to contract for printing, &c.

§ 589. The governor must have such decisions printed and bound, at the expense of the state, causing proposals to issue, and requiring bond and security for the faithful performance of the work by the undertaker, but not exceeding three hundred and fifty copies of any one volume are to be published.

Reports; how disposed of.

§ 590. The whole number of volumes, when published, must be delivered to the secretary of state, who must retain one hundred and fifty copies of each volume for the use of the state, and the others must be sold, under his direction, at a price not exceeding five dollars a volume.

Pay; when made.

§ 591. On the certificate of the governor that the work has been printed and bound, according to contract, the comptroller must issue his warrant for the amount due for such printing and binding.

Proceeds of sales.

§ 592. The proceeds of the sales of the decisions, after paying the expenses of printing and binding, are to be applied, under the direction of the chief justice, to the purchase of books for the supreme court library.

Name of judge who tried cause to be published.

§ 593. In reporting the decisions, the names of the judges and chancellors who presided on the trial below, must be published.

State copies; how distributed.

§ 594. Of the one hundred and fifty volumes received for the use of the state, there must be distributed: to the governor, each judge of any court of record, (except county commissioners,) chancellors, attorney general, and solicitors, one copy each, which must be delivered to their successors, respectively, or returned to the secretary of state; four copies must also be furnished each house of the general assembly.

Copies to be sent to other States.

§ 595. The secretary of state must transmit to the executive of each state and territory of the United States, a copy of each volume of the reports as published, with a request that if the state or territory publishes its judicial decisions, it would in return transmit a copy; which, if received, must be placed in the library of the supreme court.

CHAPTER III.

CHANCERY DIVISIONS, DISTRICTS, CHANCELLORS AND COURTS OF CHANCERY, REGISTER, AND OTHER OFFICERS.

ARTICLE 1. Chancery divisions and districts.
" 2. Chancellor and courts of chancery
" 3. Registers and other officers.

ARTICLE I.

Chancery divisions and districts.

SEC.
596. State divided into three divisons and thirty-nine districts.
597. Counties composing the districts.
598. Districts composing the southern division.
599. Districts in the middle division.
600. Districts of the northern division.

Three divisions. Names.

§ 596. This state is divided into three chancery divisions, namely: the Northern, Middle, and Southern; and into thirty-nine chancery districts.

Thirty-nine districts. Description of each district.

§ 597. The chancery districts are formed of the following counties: the first, of Mobile, Washington, and Baldwin; the second, of Conecuh, Covington, Monroe, and Clarke; the third, of Sumter and Choctaw;* the fourth, of Marengo; the

* The act of 1851–2 also makes a separate district of Choctaw county, in the southern division, by the name of the fifth district; thus making two districts of the same name in the same division.

fifth, of Dale and Henry; the sixth, of Barbour; the seventh, of Pike and Coffee; the eighth, of Montgomery; the ninth, of Lowndes and Butler;* The tenth, of Wilcox; the eleventh, of Russell; the twelfth, of Chambers; the thirteenth, of Macon; the fourteenth, of Tallapoosa; the fifteenth, of Coosa and Autauga; the sixteenth, of Dallas; the seventeenth, of Perry; the eighteenth, of Greene; the nineteenth, of Tuskaloosa; the twentieth, of Pickens; the twenty-first, of Fayette and Marion; the twenty-second, of Walker and Jefferson; the twenty-third, of Bibb; the twenty-fourth, of Shelby; the twenty-fifth, of Franklin; the twenty-sixth, of Lauderdale; the twenty-seventh, of Lawrence and Hancock; the twenty-eighth, of Limestone; the twenty-ninth, of Madison; the thirtieth, of Morgan; the thirty-first, of Blount; the thirty-second, of Marshall; the thirty-third, of Jackson; the thirty-fourth, of DeKalb; the thirty-fifth, of Cherokee; the thirty-sixth, of Benton; the thirty-seventh, of Talladega; the thirty-eighth, of St. Clair; the thirty-ninth, of Randolph.

Southern division.

§ 598. The first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth chancery districts form the southern division.†

Middle division.

§ 599. The eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth districts form the middle division.

Northern.

§ 600. The twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth and thirty-ninth districts form the northern division.

ARTICLE II.

Chancellors and courts of chancery.

SEC.		SEC.	
601.	Chancellors, how elected, term of office.	608.	Terms of courts in southern division, when held.
602.	Ordinary jurisdiction.	609.	In middle division, when held.
603.	Extraordinary jurisdiction.	610.	In northern division, when held.
604.	May punish for contempt of court, how.	611.	Disposition of suit, when chancellor disqualified.
605.	May administer oaths.	612.	Pay of solicitor trying the suit.
606.	Chancellor must hold courts in his division.	613. 614.	Special terms, when held; notice of special term.
607.	When held in each district.	615.	Salary of chancellor.

§ 601. A chancellor of each division is elected by joint

* The act of 1851–2 makes Butler county a separate district, by the name of the twelfth district; there are two districts known as the twelfth, one in the southern, and the other in the middle division.

† The districts formed of the counties of Butler and Choctaw are each attached to the southern division, by the act of 1851–2.

vote of both houses of the general assembly, who holds his office for six years, and must reside in the division for which he is elected. Chancellors; how elected.

§ 602. The powers and jurisdiction of courts of chancery extend: Ordinary jurisdiction of courts of chancery.

1. To all civil causes in which a plain and adequate remedy is not provided in the other judicial tribunals.

2. To all cases founded on a gambling consideration, so far as to sustain a bill of discovery, and grant relief.

3. To subject the equitable title or claim to real estate to the payment of debts.

4. To such other cases as may be provided for by law.

§ 603. Chancellors may exercise the extraordinary jurisdiction granted to that officer by the common law, in cases of necessity, when adequate provision has not been made for its exercise by some other officer, or in other courts, and with the exceptions, limitations, and additions imposed by the laws of this state. Extraordinary.

604. The court of chancery may punish, for contempts, by fine, not exceeding fifty dollars; and by imprisonment, not exceeding five days, one or both. Contempts of court.

§ 605. Chancellors may administer oaths, and take affidavits, in all cases relating to proceedings in any court of chancery. Oaths.

§ 606. Each chancellor has jurisdiction coextensive with the state; but must hold the chancery courts in his division, or provide for their being held by some other chancellor.* Hold courts in their own divisions.

§ 607. Courts in the several chancery districts must be held at the following places, namely: For the first district, at the court house of Mobile county; for the second district, at Monroeville, in the county of Monroe; for the third district, at the court house of Sumter county; for the fifth district, at the court house of Henry county; for the seventh district, at the court house of Pike county; for the ninth district, at the court house of Lowndes county; for the fifteenth district, in the city of Wetumpka; for the twenty-first district, at the court house of Fayette county; for the twenty-second district, at the court house of Jefferson county; for the twenty-seventh district, at the court house of Lawrence county; and in all the other districts, at the court house of the county forming such district. Courts; when held.

§ 608. The chancery courts in the southern division are to be held in each year as follows: For the first district, two terms in each year, each of which must continue until the business is disposed of, the time of holding to be determined by the chancellor of the division, and duly advertised; for the second district, on the second Monday after the fourth Monday Terms of court in southern division; when held.

* For failing to hold court, or absenting himself before final adjournment, unless on account of sickness of himself or family, high water, &c., the chancellor forfeits twenty-five dollars a day, to be deducted from his salary, the time to be certified by the register to the comptroller; and the register failing to certify, incurs a penalty of one hundred and fifty dollars. See acts of 1851-2, page 73.

in May, and the third Monday in December, and to continue until the business is disposed of; for the third district, on the fourth Monday in February and the first Monday in June, and may continue twelve judicial days; for the fourth district, on the second Monday in March, and may continue six days; for the fifth district, on the second Monday in November, and may continue six days; for the sixth district, on the first Mondays in May and November, each term to continue six days; for the seventh district, on the third Monday in November, and may continue six days; for the eighth district, on the first Monday in July, and the fourth Monday in October, and may continue six days; for the ninth district, on the fourth Monday in May, and the first Monday after the fourth Monday in November; each term to continue until the business is disposed of; for the tenth district, on the fourth Monday in August, and may continue six days.*

In middle division.

§ 609. The chancery courts in the middle division† are to be held in each year as follows: For the eleventh district, on the first Monday in May, and may continue six days; for the twelfth district, on the second Monday in May, and may continue six days; for the thirteenth district, on the third Monday in May, and may continue six days; for the fourteenth district, on the fourth Monday in May, and may continue six days; for the fifteenth district, on the first Monday after the fourth Monday in May, and may continue six days; for the sixteenth district, on the second Monday after the fourth Monday in May, and the first Monday in December, and may continue six days; for the seventeenth district, on the third Monday in June, and may continue six days; for the eighteenth district, on the fourth Monday in June, and may continue for six days, and on the second Monday in December, to continue until the business is disposed of; for the nineteenth district, on the first Monday after the fourth Monday in June, and may continue six days; for the twentieth district, on the second Monday after the fourth Monday in June, and may continue six days; for the twenty-first district, on the third Monday after the fourth Monday in June, and may continue six days; for the twenty-second district, on the fourth Monday after the fourth Monday in June, and may continue six days; for the twenty-third district, on the fifth Monday after the fourth Monday in June, and may continue six days; for the twenty-fourth district, on the sixth Monday after the fourth Monday in June, and may continue six days.

---

* By the act of 1851-2, the chancery court for the county of Butler is held on the fourth Monday in April in each year, and continues in session until the business is disposed of; and by the same act, the chancery court for Choctaw county is held on the second Monday in June of each year, and continues to sit until the business is disposed of.

† The time of holding courts in this division, was changed by the act of 1851-2, in which the several districts are referred to, as numbered under the acts in force prior to the adoption of the code.

Terms of the court when held in the northern division.

§ 610. The chancery courts in the northern division are to be held in each year as follows: For the twenty-fifth district, on the first Monday in May, and may continue six days; for the twenty-sixth district, on the second Monday in May, and may continue twelve judicial days; for the twenty-seventh district, on the fourth Monday in April, and may continue six days; for the twenty-eighth district, on the fourth Monday in May, and may continue six days; for the twenty-ninth district, on the first Monday after the fourth Monday in May, and the first Monday after the fourth Monday in November; each term to continue six days; for the thirtieth district, on the second Monday after the fourth Monday in May, and may continue four days; for the thirty-first district, on the first Friday after the second Monday after the fourth Monday in May, and may continue two days; for the thirty-second district, on the third Monday after the fourth Monday in May, and may continue three days; for the thirty-third district, on the first Thursday after the third Monday after the fourth Monday in May, and may continue three days; for the thirty-fourth district, on the fourth Monday after the fourth Monday in May, and may continue three days; for the thirty-fifth district, on the first Thursday after the fourth Monday after the fourth Monday in May, and may continue three days;* for the thirty-sixth district, on the third Monday in February, and may continue six days; for the thirty-seventh district, on the fourth Monday in February, and may continue six days; for the thirty-eighth district, on the third Monday in August, and may continue six days; for the thirty-ninth district, on the second Monday in August, and may continue six days.

If chancellor disqualified.

§ 611. When any chancellor is disqualified from sitting under section 560, he must transfer the cause to the nearest court of another chancellor, who is not disqualified; or he may, by the consent of the parties, or their solicitors entered of record, appoint a solicitor of the court to act in the cause; and such solicitor has the same authority in such cases as the chancellor, if not disqualified; and his orders and decrees therein may be appealed from, revised and enforced, as other orders or decrees rendered in such court.

Idem.

§ 612. Such solicitor receives for his compensation an amount to be agreed upon, and to be paid as may be determined by the solicitors in the cause.

Extra terms.

§ 613. Extra terms of any chancery court may be held when any regular term is not held; or when the business is not disposed of at any regular term.

Notice of extra term.*

§ 614. Thirty days' notice of the time of holding such extra term, must be given by advertisement in some newspaper in the county, or nearest to the county in which such extra term is to be held.

* An additional court is required to be held for said district every year after 1852, to commence on the Thursday before the third Monday in February, and continue in session three days. Acts 1851-2.

Salary. § 615. Each chancellor receives a annual salary of fifteen hundred dollars.

ARTICLE III.

Registers and other officers.

Sec.		Sec.	
616.	Registers, how appointed and removed; term of office.	621.	His duties.
617.		622.	Cannot grant injunctions.
618.	His bond; additional bond.	623.	Special register.
619.		624.	The sheriff of the county is the officer of the court.
620.	His office, where kept.		

Register. § 616. A register in chancery for each district is appointed by the chancellors of the respective divisions, who holds his office for four years, unless removed by the chancellor for misbehavior, malpractice, or negligence; and in such case the reasons for such removal must be entered on the minutes, at the court at which the removal is made; or if not made in term time, of the first court thereafter.

His bond. § 617. He must, before entering on the duties of his office, give bond in such sum as is required by the chancellor, not less than five thousand dollars, with security, to be approved by him; which bond must be recorded in the office of the clerk of the circuit court of the county in which the court of which he is register is held, and then filed in the office of the secretary of state, and there kept.

Additional bond. § 618. The chancellor, whenever the public interest demands, must require an additional bond; and on failure to give the same within the time fixed by such chancellor, the register must be removed from office.

Idem. § 619. Such additional bond must be approved, recorded, and filed, as the first official bond.

His office. § 620. The register must keep his office at the place at which the court of which he is register is held.

Duties of the register. § 621. It is the duty of the registers, within their respective districts:

1. To administer oaths in chancery cases, and to issue all process from such courts; to make orders of publication for defendants; to grant decrees pro confesso for the want of answers; to hear exceptions to bills, answers, and reports; issue attachments, and process of sequestration; to perform the duties of master, unless otherwise ordered by the chancellor; and to make all interlocutory decrees and orders in vacation not affecting the decision of the controversy between the parties, subject at all times to the control, direction, and supervision of the chancellor.

Idem. 2. To keep a docket, in which must be entered the names of the plaintiffs and defendants; the names of the attorneys; a minute of the time when process issued, and returned; the return thereon; and a note of all the orders and proceedings.

3. To enter, in well bound books, all orders and interlocutory decrees made by him in vacation, and all decrees and orders made by the chancellor. Idem.

4. Within six months after the final determination of any cause, to record, in well bound books, all the proceedings in relation to the same. Idem.

5. To issue within five days after the adjournment of each court, all process necessary for the enforcement of any order or decree made during the term; and if made in vacation, within the same time after it is received. Idem.

6. To keep all papers, books, dockets, and records, belonging to his office, with care and security; the papers filed, arranged, numbered, and labelled, so as to be of easy reference; the books, dockets, and records properly labelled; and to allow parties to inspect the same, free of charge. Idem.

7. On application, and the payment of the legal fees therefor, to make out and deliver to any person a correct transcript, properly certified, of any paper or record in his office. Idem.

8. To perform such other duties as may by law be required of him.* Idem.

§ 622. He has no authority to grant injunctions, or to dissolve the same, or to appoint receivers. Cannot grant injunctions.

§ 623. The chancellor may appoint a special register when necessary. Special register.

§ 624. The sheriff of the county in which the court sits, is the officer to attend upon it, maintain order, and obey the orders of the chancellor relating to its business; and all sheriffs must execute and return all process from the court of chancery, directed to any sheriff, and placed in his hands to be executed. Sheriff is the officer of court.

---

* An act of 1851-2 provides:

1. That the register must not make a record of those cases which are dismissed for want of prosecution or security for costs, or when abated by the death or marriage of either party.

2. In cases where a final decree has been rendered, on a motion to dismiss for want of equity, or on a demurrer for want of equity, multifariousness, non-joinder, or mis-joinder of parties, that he must only record the bill exhibits and final decree unless the chancellor otherwise directs.

3. Upon a final decree on the merits, he must not record commissions to take testimony, or the interrogatories, direct, cross, or rebutting, the exhibits, or the answers thereto.

4. He must mark and file all papers relating to the cause; and if taken to the supreme court, he must make out a transcript from the record and papers on file.

5. That when a transcript is required to be used in evidence, he must include in such transcript all the papers on file relating to the cause, as well as those entered of record; and such transcript, duly certified, has the same effect, as evidence, as if all the papers had been entered of record.

CHAPTER IV.

JUDICIAL CIRCUITS; CIRCUIT COURTS; JUDGES AND CLERKS.

ARTICLE 1. Judicial circuits.
" 2. The circuit courts; its judges, and certain officers.
" 3. Clerks.

ARTICLE I.

Judicial circuits.

SEC. 625. State divided into nine circuits; how composed.

Nine judicial circuits.

§ 625. This state is divided into nine judicial circuits, formed of the following counties: The first, of Marengo, Perry, Bibb, Autauga, and Coosa; the second, of Conecuh, Covington, Butler, Wilcox, Lowndes, and Dallas; the third, of Greene, Tuskaloosa, Jefferson, Shelby, and St. Clair; the fourth, of Limestone, Lauderdale, Franklin, Lawrence, Morgan, and Hancock; the fifth, of Madison, Marshall, Jackson, DeKalb, Cherokee, and Benton; the sixth, of Mobile, Washington, Baldwin, Clarke, Monroe, and Choctaw; the seventh, of Blount, Walker, Marion, Fayette, Pickens, and Sumter; the eighth, of Pike, Coffee, Dale, Henry, Barbour, and Montgomery; the ninth, of Randolph, Chambers, Russell, Macon, Tallapoosa, and Talladega.

ARTICLE II.

The circuit court and its judges, and certain officers.

SEC.
626. Judge elected for each circuit—his term of office.
627. Vacancies; how filled.
628. Jurisdiction of circuit court.
629. Authority of circuit judges.
630. Circuit court held in each county.
631. Removal of judge from circuit vacates his office.
632. Terms of court in each circuit.
633. If judge absent, court adjourned from day to day, &c.
634. Special terms, when held.
635. In trial of felony at special term; witnesses, how summoned.
636. Notice of special term.
637. Witnesses subpœnaed to special term.
638, 639. On failure to hold court, deduction from salaries, &c. Exception.
640. Proceedings where judge disqualified to try a case.
641, 642. Sheriff to have three constables in attendance—their pay.
643. Salary of circuit judge.

Judge for each circuit.

§ 626. A judge is elected for each judicial circuit, in the manner and at the time herein before prescribed, who holds his office for six years from the day of his election, and until his successor is qualified, (except in case of removal from office) and must reside in the circuit for which he was elected.

Vacancies; how filled.

§ 627. Vacancies in the office of circuit judge are filled by the governor, and the person appointed holds office until the election day of the judges, and until the election and quali-

fication of his successor, except in cases of removal from office.

Authority of the circuit court.

§ 628. The circuit court has authority:

1. To exercise original jurisdiction of all felonies and misdemeanors, and of such actions and suits at law as are not cognisable before a justice.

2. To exercise appellate jurisdiction of all civil actions cognisable before a justice, and in such other cases as may be provided by law.

3. To exercise a general superintendance over all inferior jurisdictions.

4. To punish contempts by fine not exceeding fifty dollars, and by imprisonment, not exceeding five days.

5. To exercise such other powers, not contrary to the constitution, as are or may be given to such court by law.

Of the judges.

§ 629. The circuit judges have authority:

1. To grant writs of certiorari, supersedeas, quo warranto, mandamus, and all other remedial and original writs, which are grantable by judges at the common law.

2. To grant writs of injunction and ne exeat returnable into the courts of chancery.

3. To exercise such other powers, as are or may be granted them by law.

Alternate with each other.

§ 630. They must hold the circuit courts, at the court house of each county, and at the times designated by law; and must interchange with each other, so that no judge holds the courts in the same circuit for two terms in succession.

Removal from circuit.

§ 631. They vacate their offices by removal from their circuits.

Courts when held in the first circuit. Terms.

§ 632. The circuit courts in the several circuits are held in each year, as follows: In the first circuit, in the county of Bibb, on the first Monday after the fourth Monday in March and September, and may continue six days, in the county of Autauga, on the second Monday after the fourth Monday in March and September, and may continue six days; in the county of Coosa, on the third Monday after the fourth Monday in March and September, and may continue six days: in the county of Perry, on the fifth Monday after the fourth Monday in March and September, and may continue three weeks; in the county of Marengo, on the eighth Monday after the fourth Monday in March and September, and may continue two weeks.

In the second circuit.

In the second circuit, in the county of Covington, on the second Monday in March and September, and may continue six days; in the county of Conecuh, on the third Monday of March and September, and may continue six days; in the county of Butler, on the fourth Monday in March and September, and may continue two weeks; in the county of Wilcox, on the second Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Lowndes, on the fourth Monday after the fourth Monday in March and September, and may continue two

weeks; in the county of Dallas, on the sixth Monday after the fourth Monday in March and September, and may continue three weeks.

In the third. In the third circuit, in the county of St. Clair, on the first Monday in March and September, and may continue six days; in the county of Shelby, on the second Monday in March and September, and may continue six days; in the county of Jefferson, on the third Monday in March and September, and may continue six days; in the county of Tuskaloosa, on the fourth Monday in March and September, and may continue two weeks; in the county of Greene, on the second Monday after the fourth Monday in March and September, and may continue three weeks.

In the fourth. In the fourth circuit, in the county of Limestone, on the second Monday in March and September, and may continue six days; in the county of Lawrence, on the third Monday in March and September, and may continue six days; in the county of Franklin, on the fourth Monday in March and September, and may continue six days; in the county of Lauderdale, on the first Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Morgan, on the third Monday after the fourth Monday in March and September, and may continue six days; in the county of Hancock, on the fourth Monday after the fourth Monday in March and September, and may continue six days.

In the fifth. In the fifth circuit, in the county of Madison, on the last Monday in February and August, and may continue two weeks; in the county of Marshall, on the second Monday in March and September, and may continue six days: in the county of Jackson, on the fourth Monday in March and September, and may continue six days;* in the county of DeKalb, on the first Monday after the fourth Monday in March and September, and may continue six days; in the county of Cherokee, on the second Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Benton, on the fourth Monday after the fourth Monday in March and September, and may continue until the business is disposed of.

In the sixth. In the sixth circuit, in the county of Choctaw, on the first Monday in March and September, and may continue six days; in the county of Washington, on the second Monday in March and October, and may continue six days; in the county of Clarke, on the third Monday in March, and may continue six days; and on the third Monday in October, and may continue two weeks; in the county of Monroe, on the fourth Monday in March, and the second Monday after the third Monday in October, and may continue two weeks; in the county of Baldwin, on the second Monday after the fourth Monday in March, and the fourth Monday after the third Monday in October, and may continue six days; in the

* The circuit court of Jackson county commences the third Monday in March and September, and may hold two weeks. Acts 1851-2.

county of Mobile, on the third Monday after the fourth Monday in March, and on the fifth Monday after the third Monday in October, and may continue until the business is disposed of.*

In the seventh circuit, in the county of Blount, on the third Monday in March and September, and may continue six days; in the county of Walker, on the fourth Monday in March and September, and may continue six days; in the county of Marion, on the first Monday after the fourth Monday in March and September, and may continue six days; in the county of Fayette, on the second Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Pickens, on the fourth Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Sumter, on the sixth Monday after the fourth Monday in March and September, and may continue until the business is disposed of. In the seventh.

In the eighth circuit, in the county of Pike, on the fourth Monday in March and the third Monday in September, and may continue six days; in the county of Coffee, on the first Monday after the fourth Monday in March, and the fourth Monday in September, and may continue six days; in the county of Dale, on the second Monday after the fourth Monday in March, and the first Monday after the fourth Monday in September, and may continue six days; in the county of Henry, on the third Monday after the fourth Monday in March, and the second Monday after the fourth Monday in September, and may continue six days; in the county of Barbour, on the fourth Monday after the fourth Monday in March, and the third Monday after the fourth Monday in December, and may continue two weeks; in the county of Montgomery, on the seventh Monday after the fourth Monday in March, and may continue three weeks; and on the sixth Monday after the fourth Monday in September, and may continue four weeks. In the eighth.

In the ninth circuit, in the county of Randolph, on the first Monday in March and September, and may continue six days; in the county of Chambers, on the second Monday of March and September, and may continue two weeks; in the county of Russell, on the fourth Monday in March and September, and may continue two weeks; in the county of Macon, on the second Monday after the fourth Monday in March and September, and may continue two weeks; in the county of Tallapoosa, on the fourth Monday after the fourth Monday in March and September, and may continue six days; in the county of Talladega, on the fifth Monday after In the ninth.

* Courts in this circuit commence in the county of Choctaw, on the first Monday in March and October, and continue two weeks; in the county of Washington, on the third Mondays in March and October; in the county of Clarke, on the fourth Mondays in March and October; in the county of Monroe, on the first Monday after the fourth Mondays in March and October; in the county of Mobile, on the third Mondays after the fourth Mondays in March and October, and continues until the business is disposed of. Acts, 1851–2.

the fourth Monday in March and September, and may continue three weeks.

When judge absent.

§ 633. When any circuit judge fails to attend, the court stands adjourned from day to day, until three in the afternoon of the third day, when it is adjourned to the next succeeding term.

Special terms; when held.

§ 634. Special or extra terms of the circuit court may be held at the discretion of the judge of the circuit, in the following cases:

1. On the application of any person charged with a felony, for the trial of such person.

2. When the civil business is not disposed of at a regular term; for the trial of unfinished business; in which case such special term must not exceed two weeks.

3. In such other cases as are, or may be directed by law.

When special term to try felony; witnesses subpœnaed.

§ 635. When a special term is directed for the trial of a person charged with a felony, all witnesses must be subpœnaed, or recognised to attend such special term.

Notice of special term.

§ 636. In such case there must be at least ten days between the order for, and the time of holding the special term; and when a special term is directed for the trial of unfinished business, at least thirty days' notice thereof must be given, by advertisement in some paper in the county, or as near thereto as may be.

Witnesses. Process.

§ 637. In such case, all witnesses must be summoned to, and other process in relation to such unfinished business made returnable to such special term.

Judge failing to hold court.

§ 638. If any circuit judge fails or neglects to attend any regular term of any circuit court, which he takes upon himself to hold; or after attending, absents himself before the time fixed for final adjournment, unless the business is sooner

Penalty.

disposed of, he forfeits the sum of twenty-five dollars for each and every day he is thus absent, or fails to attend, to be deducted by the comptroller from his salary; the absence or failure of such judge to be certified to the comptroller by the clerk, within ten days after the term, under a penalty of one hundred dollars, to be recovered by the solicitor in the circuit court of his county, in the name of the state, on two days' notice.

Exceptions.

§ 639. The deduction provided for by the preceding section must not be made, if the judge makes affidavit that such failure to attend, or absence, was on account of sickness of himself or family, or inevitable accident.

Proceedings when judge is disqualified.

§ 640. When any judge of the circuit court is disqualified from sitting under the provisions of section 560, the cause must be continued; or by consent of the parties or their attorneys of record, such judge must appoint an attorney of the court to act in the cause; and such attorney has the same authority in such case as the judge, if not disqualified; and his orders and judgments therein may be appealed from, revised, and enforced, as other orders or judgments rendered in said court.

§ 641. The sheriff of the county must also summon three constables to attend on such court; and should they fail to attend, a conditional judgment may be entered against them, of ten dollars each, which must be made absolute, unless they appear and show a good excuse at the next term. Sheriff to summon the constables.

§ 642. Such constables attending, receive one dollar and fifty cents for each day's attendance, to be paid out of the county treasury, on the certificate of the clerk, showing the number of days they have attended. Constables' pay.

§ 643. Each circuit judge receives a annual salary of fifteen hundred dollars. Judges' salary.

ARTICLE III.

Clerks.

Sec.		Sec.	
644.	Vacancy, how filled. Notice of appointment given.	653.	Penalty for neglect of duty.
645.		654.	When to collect sheriff's commissions.
646.	His bond. Additional bond.	655.	Causes of removal of clerk.
647.		656.	Committee to examine his office.
648.	Failure to give bond, certified by judge of probate to circuit judge.	657.	Their oath and duty.
649.	Office to be kept at court house.	658.	Their report to be recorded.
650.	Duties of clerk of circuit court.	659.	Their pay.
651.	Their authority. Must permit access to records.	660.	Clerk's stationery to be paid for by county.
652.			

§ 644. If a vacancy occurs in the office of clerk of the circuit court, subsequent to an election, it must be supplied by the judge of the court, and the person appointed holds his office until the next general election for clerks of the circuit court. Vacancy; how filled.

§ 645. In such case, the judge making the appointment must at once notify the secretary of state of the date of the appointment and name of the person. Notice of appointment.

§ 646. Before entering on the duties of his office, such clerk must give bond and security in the sum of ten thousand dollars, payable and conditioned as prescribed by section 118; which bond must be approved by a circuit judge, recorded in the office of the judge of probate, and filed in the office of the secretary of state. Clerk's bond.

§ 647. Any clerk of the circuit court, upon the address of a majority of the members of the grand jury in term time, or upon the address of three members of the court of county commissioners in vacation, that the bond of such clerk is insufficient, must be required by the presiding judge of such circuit court, or by the judge of the circuit, if in vacation, to give an additional bond; and on failure to give such bond within ten days after making such requisition, the office must be declared vacant, and filled as in other cases of vacancy. Additional bond. Failure to give it.

§ 648. When the requisition to give a new bond is made by any other judge than the judge of the circuit, and the Certificate of failure to give bond.

clerk fails to comply with such requisition for ten days, such judge must certify such failure to the judge of the circuit, to enable him to supply the vacancy under the preceding section.

His office. § 649. Clerks of the circuit court must keep their offices at the court house, or within one mile thereof.

Duties. § 650. It is the duty of clerks of the circuit court:

To issue process. 1. To issue and sign all summons, writs, subpœnas, executions, and process, under the authority of the court.

To keep appearance docket. 2. To keep an appearance docket of civil cases; in which must be entered all the civil actions brought to each term; the names of the parties; the character of the action; the names of the attorneys by whom the same are brought; and the sheriff's return.

Trial docket. 3. To keep a trial docket of civil cases; in which must be entered all the civil cases standing for trial at each term, in the order in which they were brought; the names of the attorneys employed; the character of the action; and the orders which have been made in each cause, at any previous term.

State docket. 4. To keep a trial docket of criminal cases; in which must be entered all the criminal cases in their order; the character of the offence; the return of the sheriff; the orders which have been made in each cause at any previous term; and the names of the attorneys for the defence.

Motion docket. 5. To keep a motion docket, for entering all motions intended to be submitted to the court.

Subpœna docket. 6. To keep separate subpœna dockets for civil and criminal cases; in which must be entered the cases in which any subpœnas issue; the names of the witnesses; the time of the issue; and the return of the sheriff.

Execution docket. 7. To keep an execution docket; in which must be entered all the executions issued, specifying the names of the parties; the amount of the judgment, and the day and year of its rendition; the amount of costs; the character of the execution; the date of its issue; the person to whom delivered, and the date of such delivery; the day when returned; the return in full on the same page on which the execution is entered; and the number of the execution.

Minute book. 8. To keep a book; in which must be entered the minutes of each day's proceedings during the session of the court; and the orders and judgments, in the order in which they are made or rendered.

Final records. 9. To record in well bound books, within six months after the final determination of any suit or prosecution, all the proceedings relating thereto, except the subpœnas, affidavits for continuance, commissions to take testimony, evidence and executions.

Indexes. 10. To make, and keep, direct and reversed indexes, for all books and dockets they are required to keep.

Papers of the county court. 11. To keep and file the books, dockets, and papers in relation to, and the records of all suits which have been

determined in the county court, and deposited with them, as they are required to keep and file the books, dockets, papers, and records of suits in the circuit court; and to issue all writs of execution, scire facias, writs of error, or other process on the judgments in such court, returnable as if such suits had been determined in the circuit court.

12. To keep all the papers, books, dockets, and records belonging to their office, with care and security; the papers filed, arranged, numbered and labelled, so as to be of easy reference; and the books, dockets, and records properly lettered; and to allow parties to inspect the records free of charge. To keep office papers in order.

13. To attend court during the session thereof, with all the papers belonging to the term, so filed as to be of easy reference; to keep in the court house during such session, convenient of access, the execution docket for the two preceding terms; and to administer all oaths and affidavits in relation to causes or proceedings pending therein. Duties in term time.

14. On application and payment of the legal fees therefor, to make out and deliver to any person applying for the same, a correct transcript, properly certified, of any paper or record in his office. Certify copies.

15. To perform such other duties as are or may be by law required of them.

§ 651. Clerks of the circuit court have authority: Administer oaths.

1. To administer oaths and take affidavits, in all cases in which the authority to administer such oath is not confined to some other officer.

2. To appoint deputies, with full power to transact all business of such clerk; such deputy first taking an oath to support the constitution and laws of this state, and faithfully to discharge the duties of deputy clerk of the court for which he acts. Deputies.

3. To receive the amount of any judgment rendered in the courts of which they are clerks, either before or after the issue of execution thereon. Receive money on judgments.

4. To exercise such other powers as are or may be conferred upon them by law.

§ 652. Any clerk of the circuit court refusing to allow the parties, or either of them, to any suit, to inspect the record thereof, free of charge, is guilty of a misdemeanor, and, on conviction, must be fined fifty dollars. Permit access to records.

§ 653. Any clerk of the circuit court who fails to perform any duty imposed by this article, for the failure to perform which no other penalty is provided, is guilty of a misdemeanor, and must, on conviction, be fined not exceeding two hundred dollars; and may, at the discretion of the presiding judge, be removed from office.* Neglect of duty. Penalty.

* The act of 1851-2 requires clerks of the circuit courts to keep reversed indexes to all the records in their offices, and on failure to complete such indexes within two years from the passage of the act, they forfeit one hundred dollars, to be recovered by the solicitor, on motion in the court below.

To collect the costs and commissions, and the sheriff's fees.

§ 654. When any clerk receives payment of a judgment, he must collect the costs and commissions of the sheriff, if execution has issued on such judgment.

Causes for removal from office.

§ 655. Clerks of the circuit court may be removed from office, for incapacity, neglect of duty, or misbehavior in office; charges for which must be exhibited to the court in writing, and the facts tried by a jury: such clerk being entitled to a copy of the charges three days before trial.

Offices to be examined.

§ 656. The judges of the circuit court must, in term time, as often as they think the public interest requires, appoint in each county one or more persons, not exceeding three, to examine the office of the clerk of the circuit court of such county.

Oath of the committee.

§ 657. The persons so appointed must take and subscribe an oath, well and truly to examine the records, books, and dockets of such court, and the condition of the office generally; and must, in the vacation after such court, examine such office, and report the condition of the same to the next circuit court, in writing; specifying particularly any neglect of duty, or any thing done wrongfully or corruptly in relation to such office.

Their report.

§ 658. The report, when made, must be recorded in the office of the judge of probate, and is subject to the inspection of all persons, free of charge.

Their pay.

§ 659. The persons so appointed receive such compensation for their services as may be allowed them by the court of county commissioners.

Clerks' stationery; how supplied.

§ 660. The court of county commissioners must allow to the clerks of the circuit court the amounts properly expended by them, for books and stationery, for the use of their offices.

CHAPTER V.

COURTS OF PROBATE.

Sec.		Sec.	
661.	The judge, his term of office.	676.	Claims to property levied on, under execution from.
662. 663.	Who eligible; vacancies, how filled.	677.	Proceedings when claim is made.
664. 665.	His bond, by whom approved, recorded, and filed.	678.	Proceedings when property is found subject.
666.	Who may sue on the bond.	679.	Rules for trial of right of property.
667. 668.	Conservator of the peace, his office and office hours.	680.	Process issued from, when returnable.
669.	To keep a seal of office, &c.	681.	Penalty for failure to execute or return process.
670.	Original jurisdiction of courts of probate.	682. 683.	When judge disqualified from sitting.
671.	May punish contempts of court.	684.	Stationery of office paid for by county.
672.	His duties, &c.	685.	Penalty for willful neglect of duty.
673.	Regular and special terms, &c.		
674.	Authority of judge of probate.		
675.	Orders and process signed, dated, &c.		

§ 661. A judge is elected in each county at the time here-

inbefore prescribed, who is styled the judge of probate, and who holds his office six years from the day of his election, and until the election and qualification of his successor, except in case of removal from office. Judge elected; his term of office.

§ 662. Judges of probate must be citizens of the state, and must have resided in the county for which they are elected, one year preceding their election. Qualifications.

§ 663. Vacancies in the office of judge of probate are supplied by the governor, and the person appointed holds office until the election day of judges, and until the election and qualification of his successor, except in cases of removal from office. Vacancies.

§ 664. Before entering on the duties of his office, each judge of probate must give bond, with security, to be approved, and the amount not less than five thousand dollars, to be fixed by a judge of the circuit court. Bond.

§ 665. Such bond, after being recorded in the office of the clerk of the circuit court of the county for which he was elected or appointed, must be filed in the office of the secretary of state, with the certificate of the clerk of the circuit court, that the bond has been recorded in his office. Where recorded and filed.

§ 666. All bonds given by judges of probate, may be sued on by any one sustaining any injury, by reason of any neglect or omission of such officer to take good and sufficient security from any executor, administrator, or guardian, or from any officer whose bond it is his duty to approve; or in any case in which it is his duty to require additional bond, and he fails so to do; or by the failure of such judge to perform any other official duty. Bond; by whom sued on.

§ 667 Judges of probate are conservators of the peace in their respective counties. Peace officers.

§ 668. They must keep their offices at the court house, and open for the transaction of business, at least on Mondays, Tuesdays, and Saturdays of each week, except the fourth day of July and Christmas, from nine in the morning until four in the afternoon, with an interval of one hour at noon. Offices; where kept. Office hours.

§ 669. They must have a seal of office, using private seals until the same are provided. Seal of office.

§ 670. Courts of probate have, in the cases defined by law, original jurisdiction of: Original jurisdiction.

1. The probate of wills.
2. The granting of letters testamentary, and of administration, and the repeal or revocation of the same.
3. Of all controversies in relation to the right of executorship, or of administration.
4. The settlement of accounts of executors and administrators.
5. The sale and disposition of the real and personal property belonging to, and the distribution of, intestates' estates.
6. The appointment and removal of guardians for minors, and persons of unsound mind. Idem.
7. All controversies as to the right of guardianship, and the settlement of guardians' accounts.

8. The binding out of apprentices, and all controversies between master and apprentice.

9. The allotment of dower in lands, in the cases by law provided.

Idem. 10. The partition of land within their counties.

11. The change of the name of any person residing in their county, upon filing his declaration in writing, signed by him, stating the name by which he is known, and the name to which he wishes it to be changed.

12. In such other cases as jurisdiction is or may be given to such courts by law, and in all cases to be exercised in the manner prescribed by law.

Summary powers. § 671. Such courts may issue rules and attachments for contempts offered to the court, or its process, by any executor, administrator, guardian, or other person; and may punish the same, by fine, as high as twenty dollars, and imprisonment not exceeding twenty-four hours, one or both.

Duties of judge of probate. § 672. It is the duty of the judges of probate:

1. To issue all citations, letters testamentary, of administration and guardianship, subpœnas, execution, and all other process which is necessary for the exercise of their powers, the jurisdiction of their courts, and the enforcement of their judgments, orders, and decrees.

2. To keep minutes of all their official acts and proceedings; and within three months thereafter, to record the same in well bound books.

Idem. 3. To keep all the papers, books, and records belonging to their office, with care and security; the papers arranged, filed, and labelled, so as to be of easy reference; and the books and records lettered, and kept with direct and reversed indexes.

4. On application of any person, and the payment or tender of their lawful fees, to give transcripts of any paper or record required to be kept in their office, properly certified.

5. To perform such other duties as are, or may be required of them by law.

Regular terms of probate courts; adjourned terms. § 673. A court of probate must be held at the court house of each county, on the second Monday in each month, and the judges may hold special or adjourned terms at any time whenever necessary, for any special purpose; but such courts

Always open for certain purposes. must at all times be considered as open, except on Sundays, with authority to do all things needful in relation to granting letters testamentary, of administration, or guardianship, and all matters appertaining thereto; binding out apprentices, and making all other necessary orders, which are grantable as a matter of course.

Authority of judge of probate. § 674. Judges of probate have authority:

1. To administer oaths, and take and certify the same in all cases in which the administering such oath, and taking such affidavit, is not confined expressly to some other officer.

2. To grant writs of habeas corpus in those cases in which the power is conferred by law.

3. To grant writs of certiorari on any civil judgment rendered by a justice, returnable to the next circuit court of their county.

4. To cause jurors to be empannelled and sworn in any matter of fact pending before them, in which the right to a jury trial is given by law.

5. To employ at his own expense a clerk, who may do all acts not judicial in their character, and for whose official acts the judge is responsible.

6. To exercise such other powers as are, or may be conferred on them by law.

Orders and process; how signed and dated.

§ 675. All letters testamentary, of administration, and of guardianship, and all other process from the court of probate, is to be signed by the judge, bear date on the day of its issue, and conform as near as may be to that used in the courts of law in this state; and must be directed, executed, and returned, in the like manner, and under the same penalties.

Claim to property levied on.

§ 676. When any personal property is levied on by any execution issued from, or returnable to, the probate court, and claimed by a person not a party to the execution, affidavit may be made, bond given, and the property restored to the claimant as provided for by section 2587.

Execution returned to probate court, and copy of it to circuit court.

§ 677. The sheriff must return the original execution to the judge of probate issuing the same, with his return thereon of the interposition of a claim. He must also return a copy of the execution with the returns thereon, the affidavit, and bond, to the office of the clerk of the circuit court of his own county, where the trial of the right of property is to be had, according to the provisions of Chapter second, Title two, Part third.

If property be found subject.

§ 678. If the property is found subject, and not delivered according to the provisions of section 2592, the sheriff must endorse the bond forfeited; and thereupon the clerk must issue execution as in other cases of the trial of the right of property, under the provisions of the chapter referred to in the preceding section, except that the execution must be made returnable to the court of probate, from which the original execution issued, according to the provisions of section 680; of which, and the time of its receipt by the sheriff, he must give the judge of such probate court written notice, which is presumptive evidence of the fact against such sheriff.

Mode of trial.

§ 679. The rules laid down in the Chapter second, Title Two, Part third, apply, so far as the same are applicable, to trials of the right of property and proceedings thereon, and the effect of the claim, as to executions from the probate courts.

When returnable.

§ 680. All executions and other process, issuing from the court of probate, or issued by the judge thereof, may be made returnable if no other day is provided by law, to any regular term of the court of probate, not less than three, nor more than six months after such issue, or to any special term within the same period.

Neglect to execute process or pay over money.

§ 681. For failing to make the money on, or for failing to return any execution issued from, or returnable to, the court of probate, or for not paying over money collected on such execution, the sheriff so failing and his securities are liable to the same penalties and judgments, as in like cases in the circuit court; the proceedings to be instituted and conducted in the probate court, in the same manner as in the circuit court; and an appeal may be taken therefrom to the circuit or supreme court, as in like cases from the circuit to the supreme court.

§ 682. The provisions of Chapter ten, Title one, Part three, apply to proceedings in the courts of probate, in the absence of any express provision to the contrary, and so far as the same are applicable thereto.

If judge be disqualified.

§ 683. In all cases in which the judge of probate is disqualified from sitting under the provisions of section 560, the matters or proceedings are governed by the provisions of sections 1910, 1911, 1912, 1913, and 1914; so far as the same are applicable.

Stationary of office.

§ 684. Every judge of probate must be allowed reasonable expenses for suitable books, stationery, and providing a seal of office, to be paid by the county.

Wilful breach of duty.

§ 685. If any judge of probate, knowingly and willfully, does any act contrary to the duties of his office, or knowingly omits or refuses to perform any duty required by law, he is guilty of a misdemeanor, and, on conviction, must be fined not exceeding two hundred dollars, and removed from office.

CHAPTER VI.

THE SHERIFF.

SEC.		SEC.	
686.	His bond, its penalty, by whom approved, where filed.	692.	Book of receipts, what to show.
687.	Bond, when there is no judge of probate.	693.	Sale book, what to show.
688. 689.	His office, where kept. Deputies.	694.	These books open to inspection, where left at end of his term.
690.	Duties of sheriff.	695.	Penalty for failure.
691.	His execution docket, what it must contain.	696.	Coroner, when to act in place of sheriff.

Bond.

§ 686. The sheriff, before entering on the duties of his office, must give bond with security, in an amount to be fixed by the judge of probate of his county, not less than five thousand dollars, payable and conditioned, as provided in section 118; which bond must be approved by the judge of probate, and recorded and filed in his office.

If there is no judge of probate.

§ 687. If there is no judge of probate, the amount of such bond must be fixed, and the book approved by the clerk of

the circuit court, and recorded, and kept in his office, until the office of judge of probate is filled, when it must be delivered to him, and recorded and kept in his office.

Office.

§ 688. Each sheriff must keep his office within one mile of the court house.

Deputy.

§ 689. He must have one deputy, and may have as many as he thinks proper.

Duties.

§ 690. It is the duty of the sheriff:

To execute process.

1. To execute and return the process, and orders of the courts of record of this state, and of officers of competent authority, with due diligence, when delivered to him for that purpose, according to the provisions of this code.

To attend upon courts when in session.

2. To attend upon the chancery and circuit courts, held in his county, when in session, and the courts of probate, and the court of county commissioners, when required by the judge of probate, and to obey the lawful orders and directions of such courts.

3. To perform such other duties as are, or may be imposed by law.

To keep an execution book.

§ 691. Each sheriff must also enter in well bound books, whenever any execution or order of sale is received by him, the names of the parties; the character of the process; the time of its receipt; the date of the judgment, or decree, on which the same issued, if it appears from such process; the amount of the same, principal, and costs; the court from which it issued; and the name of the attorneys as endorsed thereon.

To enter receipts.

§ 692. He must also enter on the same page, against the entries required by the preceding section, the amount he receives on such execution, or order of sale; stating the principal, interest, and costs, separately; and also stating, separately, each item of costs he receives, which is not charged in the bill of costs; the time he receives the same; and his return.

Sale book.

§ 693. He must keep a sale book; in which he must enter all the property sold by him under any process from any court; a brief description of such process; when the property was sold; the purchaser; and at what price.

Books open for inspection.

§ 694. These books must at all times be open to the inspection of the public, free of charge; and must, within sixty days after he goes out of office, be deposited, and kept, in the office of the clerk of the circuit court of the county.

Penalty for neglect.

§ 695. If any sheriff fails to comply with the provisions of the last four sections, he is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars.

When the coroner acts.

§ 696. When the office of sheriff is vacant, or the sheriff is incompetent to act, the coroner of the county must perform all the duties of sheriff of such county, under the same penalties and liabilities imposed by law on sheriffs.

CHAPTER VII.

THE COURT OF COUNTY COMMISSIONERS.

Sec.	
697.	How constituted—a court of record.
698.	Vacancy; how filled.
699.	Commissioners ineligible to certain offices.
700 } 701 }	Quorum of court—regular terms, &c.
702.	Special terms—notice given of special term.
703.	Original jurisdiction of court.
704.	Authority of the court.
705.	Proceedings to be recorded by judge.
706 } 707 }	Proceedings if judge absent—if court divided.

How constituted.

§ 697. There is in each county a court of record, styled the court of county commissioners, composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by this code, and hold office for three years.

Vacancy; how filled.

§ 698. In case of a vacancy, it is to be filled by the court, and the person so appointed holds office for the remainder of the term of the commissioner in whose place he is appointed.

Ineligible to certain offices.

§ 699. No county commissioner is eligible to, or must discharge the duties, either as principal or deputy, of any office which is filled, or the vacancy in which is supplied by the court, or its members.

Quorum of court.

§ 700. This court may be held by the judge of probate and two commissioners, or by three commissioners without the judge of probate; and if as many as two commissioners fail to attend, during the two first days of any term, the judge of probate may hold the court.

Regular terms.

§ 701. Regular terms of this court are held on the second Monday in February and August, and the first Mondays of April and November; but the time of holding such regular terms may be changed by such court, to suit the public convenience, by an order, to be entered on their minutes, and due notice given thereof.

Special terms.

§ 702. In cases where officers are to be appointed, or vacancies supplied, or any other special duty required by law to be performed, a special term must be held, by direction of the judge of probate, upon ten days' notice by advertisement in some newspaper in the county, or by posting up at the court-house door, and two other public places in the county, notice of the same.

Original jurisdiction.

§ 703. This court possesses original jurisdiction in relation to the establishment, change, or discontinuance of roads, bridges, causeways, and ferries, within its county; to be exercised in conformity with the provisions of this code.

Its authority.

§ 704. It has authority:

County property.

1. To direct and control the property of the county, as it may deem expedient, according to law.

County levy.

2. To levy a general tax, for general, and a special tax, for particular county purposes, according to the provisions of this code.

3. To examine, settle, and allow, all accounts and claims, chargeable against the county. Audit accounts against county.

4. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county, or appropriated for its use and benefit. Accounts of officers.

5. To make such rules and regulations for the support of the poor, in the county, as are not inconsistent with any law of the state. Support of poor.

6. To punish for contempts by fine, not exceeding ten dollars, and imprisonment not exceeding six hours. Contempts of court.

7. To exercise such other powers as are or may be given it by the laws of this state.

§ 705. The judge of probate must record the proceedings of this court, make all necessary orders, and issue all process, necessary to sustain its jurisdiction, or maintain its authority. Proceedings recorded.

§ 706. When a court is held without the attendance of the judge of probate, a special clerk must be appointed for such term, who must be paid by the judge of probate. If judge is absent.

§ 707. In all matters where the court is divided, the same must be determined by the judge of probate. If court divided.

CHAPTER VIII.

JUSTICES AND CONSTABLES.

ARTICLE 1. Justices.
" 2. Constables.

ARTICLE I.

Justices.

SEC.
708. Two justices for each precinct—term of office.
709. Vacancies; how filled, &c.
710. Bond; its penalty; by whom approved, &c.
SEC.
711. Original jurisdiction of justice, in suits.
712. Authority of justice.
713, 714. Duties of justice; removal from precinct vacates office.

§ 708. Within the limits of every election precinct are two justices of the peace, elected as hereinbefore prescribed, who hold office for three years, and until their successors are qualified. Elected for each precinct. Term of office.

§ 709. Vacancies in the office of justice are to be filled by special election, as provided for by section 264, and the justices so elected hold their office for the unexpired term, and until their successors are qualified. Vacancies.

§ 710. Before entering on the duties of their office, they must give bond, and security, payable, and conditioned, as provided by section 118, in the sum of one thousand dol- Their bond.

lars; which bond must be approved by the judge of probate of their county, and kept in his office.

Jurisdiction.

§ 711. Justices of the peace have original jurisdiction, within their respective counties, to be exercised as provided for by law.

Amount of fifty dollars.

1. Of all actions founded on any contract, where the sum claimed does not exceed fifty dollars.

Damage suits.

2. Of all actions founded on any wrong, or injury, except slander, where the damages claimed do not exceed fifty dollars.

Forcible entry, &c. Detinue.

3. Of all actions of forcible entry, and unlawful detainer.

4. Of all actions brought to recover specific property, where the value does not exceed fifty dollars.

5. In such other cases as jurisdiction is, or may be given by law, not contrary to the constitution.

Authority of justice.

§ 712. Every justice is a conservator of the peace within his county, and has authority therein:

Administer oaths.

1. To administer oaths, and take affidavits, except in those cases in which the power is expressly restricted to some other officer.

Punish for contempts.

2. To punish for contempts by fine, as high as six dollars, and by imprisonment, not to exceed six hours, one or both.

Appoint special constable.

3. When the office of constable in his precinct is vacant, or in cases of emergency, to appoint a person to act in his place, without giving bond and security, in the execution of all process, except the collection of executions.

Acknowledgment of deeds, &c.

4. To take the acknowledgment, or probate of all deeds, or conveyances, required to be recorded, and certify the same for registration.

Other powers.

5. To exercise such other powers as are or may be conferred on him by law.

Duties.

§ 713. It is the duty of every justice of the peace:

To keep docket of causes.

1. To keep a docket of all causes brought before him, in which must be entered, the names of the parties, the return of the officer, and the entry of the judgment; specifying the amount of the same, and the day of its rendition.

Issue process.

2. To issue all process necessary to maintain his jurisdiction, and enforce his authority, under such rules and regulations as are, or may be provided by law.

To keep an office in his precinct.

3. To keep his office in the election precinct for which he is chosen.

Pay over money.

4. To pay over all moneys he may collect, or receive by virtue of his office, to the person entitled thereto, without delay.

5. To perform such other duties as are, or may be, required of him by law.

Removal from precinct vacates office.

§ 714. Justices of the peace vacate their offices, by removing from their election precincts, and are liable to a penalty of forty dollars, for acting as justice after such removal; to be recovered before any justice of the county in which such justice resides, by any one suing for the same; one half to the use of the person suing for the same, and the other half to the use of the state.

Penalty for acting.

ARTICLE II.

Constables.

SEC.
715. Constable for each precinct, how elected, and term, &c.
716 } Vacancy, how filled. Bond, &c.
717 }
718 } Conservator of peace—his du-
719 } ties.
720. Removal from precinct, vacates his office.

§ 715. There is one constable for every election precinct in each county in the state, elected as hereinbefore prescribed, who holds office for three years, and until his successor is qualified. How elected.

§ 716. Vacancies in the office of constable are supplied by special election, as provided for in section 264; and the person elected holds for the unexpired term. Vacancy.

§ 717. Before entering on the duties of their office, they must give bond with security in the sum of one thousand dollars, conditioned and payable as prescribed by section 118, which bond is to be approved by the judge of probate, and kept in his office. His bond.

§ 718. Every constable is a conservator of the peace within his county. Peace officers.

§ 719. Their duties are: Duties.

1. To attend the terms of the circuit court of their county, when summoned by the sheriff for that purpose. Attend circuit court when required.

2. To execute, and return all summons, executions, and other process, to them directed, by any lawful authority. Execute process.

3. To pay over moneys collected by virtue of their office, to the person entitled thereto. Pay over money.

4. To perform such other duties as are, or may be, required of them by law.

§ 720. They vacate their offices by removal from the election precinct, and are liable to a penalty of forty dollars for acting as constable after such removal; to be recovered before any justice of the county in which he resides, by any one suing for the same; one half to the use of such person, and the other half to the use of the county. Removal from precinct vacates office.

CHAPTER IX.

SOLICITORS.

SEC.
721. Solicitors, how elected: attorney general, &c.
722. Vacancies filled by the governor.
723. Must reside in the circuit, or vacates office.
724. Their duties within their circuits.
725. Penalty for absence from court.
726. Must attend special terms.
727. When solicitor absent or disqualified, &c.
728. Salary of solicitors.

§ 721. The attorney general is, by virtue of his office, the

How elected. solicitor of the circuit in which the seat of government is located; for each other circuit, a solicitor is elected by the joint vote of the general assembly, who holds his office for four years.

Vacancies; how filled. § 722. Vacancies in this office are filled by the governor, under the fifteenth section of the fourth article of the constitution.

Must reside in the circuit. § 723. Every solicitor must reside in his circuit, after twelve months from the time of his election, or he vacates his office; and it is the duty of the judge of the circuit to notify the governor of such failure, who must supply the vacancy.

Their duties. § 724. Their duties are, within their circuits:

Attend and advise grand juries, &c. 1. To attend on the grand juries, advise them in relation to matters of law, and examine and swear witnesses before that body.

Indictments. 2. To draw up all indictments, and to prosecute all indictable offences.

Civil suits when state a party. 3. To prosecute and defend any civil action in the circuit court, in the prosecution or defence of which the state is interested.

4. To perform such other duties as are or may be required by law.

Penalty for not attending court. § 725. The solicitors must attend each regular term of the circuit court in their circuits, and remain until the business of the state is disposed of: if absent, a conditional judgment must be rendered against them for one hundred dollars, to be made absolute, on notice to such solicitor at the next term thereafter, unless a good excuse is rendered.

Attend certain special terms. § 726. The solicitor must also attend each special term of the circuit court, held for the trial of persons charged with felony; and on failure so to do, a conditional judgment must be rendered against him for fifty dollars, to be made absolute, as in the preceding section, unless a good excuse is rendered.

If solicitor absent or disqualified. § 727. The presiding judge, when the solicitor is absent, or when he is connected with the party against whom it is his duty to appear, by consanguinity, or affinity within the fourth degree, must appoint a competent attorney to act in his place.

Salary. § 728. The solicitors, except the attorney general, receive an annual salary of two hundred and fifty dollars.

CHAPTER X.

ATTORNEYS.

SEC.
729. Who may practice as attorneys.
730. Extent of the license to practice.
731. Who may be licensed.
732. Application for license.
733. } Examination of applicant; order
734. } of admission.
735. } Oath of attorney; penalty for
736. } practicing before oath.
737. Party may manage his own cause.
738. Duties of attorneys.
739. Disqualification of certain officers.
740. Judges of probate not to practice in certain cases.
741. Clerks and registers not to practice in their courts.
742. Penalty for practicing by these persons.
743. Authority of attorneys in cause.
744. } Proceedings on appearance with-
745. } out authority, penalty.
746. Proof of authority, when required, how made.

SEC.
747. Causes of removal of attorney.
748. Other causes of removal, or suspension.
749. } At whose instance done, charge
750. } to be in writing.
751. } Charge to be sworn to, attorney
752. } cited to answer.
753. In default of appearance, charge examined, &c.
754. } Answer, how made, &c.
755. }
756. How tried, accused may demand jury.
757. Appeal taken to supreme court.
758. In whose name conducted, &c.
759. } Testimony, security for costs,
760. } how costs awarded.
761. Proceedings on death of informant.
762. When attorneys of other states may practice.

§ 729. The following persons only are entitled to practice in the courts of this state: Who may practice as attorneys.

1. Those who have been regularly licensed under the laws of this state, before the adoption of this code.

2. Those who are hereafter admitted by a license from the supreme court, the court of chancery, or a circuit court.

§ 730. Those who have been regularly licensed under the laws of this state, can practice only in such courts as their license authorizes them; those who are hereafter admitted to the supreme court, may practice in all the courts in this state; and those admitted by any chancery or circuit court, may practice in any court of the state, except the supreme court. In what court.

§ 731. Any white male, of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, is entitled to admission to practice in any, or all the courts of this state. Who to receive license.

§ 732. For the purposes of admission, he must apply to the supreme court, the court of chancery, or the circuit court, and must show: Application for license.

1. That he is of the age of twenty-one years, which proof may be made by his own affidavit. Proof to be made.

2. That he is of good moral character, which may be proved by certificate, or other evidence satisfactory to the court.

§ 733. The applicant must also be examined in open court, touching his knowledge: Character of examination.

1. Of the law of real property.

2. Of the law of personal property.

3. Of the law of pleading, and evidence.

4. Of the commercial law.
5. Of the criminal law.
6. Of chancery, and chancery pleading.
7. On the statute laws of the state.

Order for admission to the bar.

§ 734. If, on examination, the applicant is found duly qualified in all the branches specified in the preceding section, the court must direct an order to be entered, that the applicant is of the age of twenty-one years, of good moral character, and possesses the requisite qualifications of learning and ability, to practice in the several courts of this state, in which his license entitles him; and upon the entry of such order, obtaining his license, and taking the oath prescribed by the following section, he is entitled to practice accordingly.

Oath of attorney.

§ 735. Every attorney, before commencing practice, must take an oath to support the constitution of this state, and of the United States, and not to violate the duties enjoined on him by law; which oath must be filed in the office of the clerk, or register of the court by which he is licensed.

Penalty for not taking the oath.

§ 736. If any attorney commences practice before taking and filing the oath prescribed by the preceding section, he forfeits the sum of two hundred dollars, one half to the use of the person suing for the same, and the other to the use of the state.

Party may appear in person.

§ 737. Any person may, however, conduct and manage his own case, in any court of this state.

Duties.

§ 738. It is the duty of attorneys:

To support the constitution.

1. To support the constitution and laws of this state, and the United States.

Behave respectfully to courts.

2. To maintain the respect due to courts of justice, and judicial officers.

To sustain causes fairly.

3. To employ, for the purpose of maintaining the causes confided to them, such means only as are consistent with truth; and never to seek to mislead the judges by any artifice, or false statement of the law.

To preserve secrets of clients.

4. To maintain inviolate the confidence, and, at every peril to themselves, to preserve the secrets of their clients.

Deal justly to witnesses and parties.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

6. To encourage neither the commencement nor continuance of an action, or proceeding, from any motives of passion or interest.

7. Never to reject, for any consideration personal to themselves, the cause of the defenceless or oppressed.

Certain officers disqualified.

§ 739. No judge of the supreme or circuit court, chancellor, sheriff, or deputy sheriff, must practice in any of the courts of this state.

Judge of probate not to practice in certain cases.

§ 740. The judges of probate cannot appear in any suit or proceeding in their county, touching any matter, of which, under section 670 of this code, they have original jurisdiction; or for, or against any public officer, or his securities,

whose bond is required to be taken, or approved by them; or appear as attorney in any court of this state, in the prosecution or defence of any suit for or against any executor, administrator or guardian.

Clerks and registers.

§ 741. No clerk, or register, can practice in the court of which he is the clerk or register.

Penalty.

§ 742. Any one appearing, or practicing, in violation of the three preceding sections, forfeits the sum of one hundred dollars; one half to the use of the person suing for the same, the other half to the use of the state.

Authority of attorney in an action in court.

§ 743. An attorney has authority to bind his client, in any action, or proceeding, by any agreement in relation to such cause, made in writing, or by an entry to be made on the minutes of the court.

If attorney appear without authority.

§ 744. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear, from the consequences of his acts.

Penalty.

§ 745. Any attorney appearing for a person, without being employed, is guilty of a high misdemeanor, and, on conviction thereof, must be fined in a sum not less than five hundred dollars, and shall be incompetent to practice in any court of this state.

Proof of authority; when required.

§ 746. The court or judge may, on motion of either party, and, on showing reasonable grounds therefor, require the attorney for the adverse party, or for one of several adverse parties, to produce, or prove, the authority under which he appears; and, until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear; but the oath of the attorney is presumptive evidence of his authority.

How made.

Causes of removal.

§ 747. An attorney must be removed for the following causes by the circuit court:

1. Upon his being convicted of a felony other than manslaughter, or misdemeanor involving moral turpitude; in either of which cases the record of his conviction is conclusive evidence.

2. When any judgment is rendered against him, for money collected by him as an attorney, upon which judgment and execution has issued, and been returned no property; in which case the record of the judgment and execution is conclusive evidence.

Other causes.

§ 748. For the following causes he may be removed or suspended:

1. Upon its being shown, to the satisfaction of the court, that he has been guilty of any deceit or willful misconduct in his profession.

2. For a willful disobedience, or violation, of the order of a court, requiring him to do, or forbear, an act connected with, or in the course of his profession.

3. For a willful violation of any of the provisions of section 738.

At whose instance.

§ 749. The proceedings to remove, or suspend an attorney, as provided for in the two last sections, may be taken by the court of its own motion, or upon the motion of any third party.

Charge to be in writing.

§ 750. The accusation must be in writing, and when the proceeding is taken by the court, it may be drawn up by the solicitor, or the clerk, under the direction of the court.

Sworn to.

§ 751. If the proceedings are upon the information of another, the accusation must be verified by the oath of the person making it, or some other person, and presented to the court.

Court to cite accused to answer.

§ 752. The court must then, if of opinion that the accusation would, if true, be grounds of removal, or suspension; make an order requiring the accused to appear and answer the same, at a specified day during the same, or at the next term; and must cause a copy of the order and accusation, to be served on the accused, within a prescribed time before the day appointed in the order.

Accused must answer.

§ 753. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

Demurrer or issue.

§ 754. The accused may answer, either by objecting to the sufficiency of the accusation, or by denying its truth; either of which must be entered on the minutes.

Demurrer overruled.

§ 755. If the objection to the sufficiency of the accusation be not sustained, the accused must answer it forthwith.

Trial by jury if demanded.

§ 756. If he plead guilty, or refuse to answer the accusation, the court must proceed to judgment of removal, or suspension; if he deny the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same; the accused having a right to demand a trial by jury.

Appeal.

§ 757. A judgment of acquittal is final; but from a judgment of removal or suspension, the accused may appeal to the supreme court at any time within thirty days after the judgment.

In whose name conducted.

§ 758. The proceedings, when instituted by the court of its own motion, are conducted in the name of the state; the solicitor appearing to sustain the accusation; and when, on the information of another in the name of the state, on the information of such person.

Testimony.

§ 759. Either party has a right to subpœnas, and other process to compel the attendance of witnesses, and testimony may be taken by deposition, in such cases, and in the same manner, as in actions at law; and the court may, in its discretion, require the informant to give security for costs; and failing so to do within the time prescribed, the proceedings must be dismissed at the costs of the informant.

Security for costs.

Costs; how awarded.

§ 760. When the proceedings are in the name of the state, the costs are paid, as in criminal cases; when in the name of the state on the information of another, if the accusation is

not sustained, judgment is rendered against the informant, and his security for costs, if the same has been given; but if the accusation is sustained against the accused, judgment for costs must be rendered against him.

On death of informant.

§ 761. Upon the death of the informant, if there be but one, the proceedings abate, unless some other person is substituted in his place, which may be done on application to the court. If there is more than one informant, the proceedings continue on the information of the survivors.

When foreign attorneys may practice.

§ 762. Attorneys at law residing in other states of the Union, having a license to practice law therein, may practice in any of the courts of this state, when by law the attorneys of this state are permitted to practice law in such state; and such attorneys, when practicing in the courts of this state, are subject to all the rules and regulations prescribed in this chapter.

Title 10.

COUNTY ORGANIZATION.

CHAPTER 1. Incorporation of counties; deeds, contracts, and agreements for the benefit of; county property and county claims.
" 2. County revenue.
" 3. The coroner.
" 4. County surveyor.

CHAPTER I.

INCORPORATION OF COUNTIES; DEEDS, CONTRACTS, AND AGREEMENTS FOR THE BENEFIT OF; COUNTY PROPERTY, AND COUNTY CLAIMS.

SEC.
763. County a body corporate, &c.
764. Deeds to others for use of county, vest title in county, &c.
765. Court of county commissioners have custody of its property, &c.
766. County buildings erected and repaired by county.
767. Sheriff has charge of court house, &c.
768. Duty of court of county commissioners to build jail and court house.
SEC.
769. County jail, how constructed and arranged.
770. Tax to be levied for building jail.
771. Penalty on commissioners, &c., for neglect.
772. Grand jury to inspect jail, &c.
773. Court of county commissioners to audit claims on county and register allowed claims.
774. If not allowed, claim may be withdrawn.
775. Claims barred if not presented, &c.; minors' claims.

Counties are bodies corporate.

§ 763. Every county which has been, or may be established in this state, is a body corporate, and with power to sue or be sued in any court of record.

Conveyances to use of a county.

§ 764. All deeds, conveyances, or grants, which have been, or may be made to any officer or person for the use

and benefit of the county, vests in such county the title as fully as if made to such county by name.

Sale of its real estate.

§ 765. The court of county commissioners have the control of all property belonging to the county, and may, by an order to be entered on their minutes, direct the disposal of any real property which can be lawfully disposed of, and appoint a commissioner to make titles thereto; and the conveyance of such commissioner, in accordance with such order, invests the grantee with the title of the county.

County buildings.

§ 766. The county buildings are to be erected and kept in order and repair at the expense of the county, under the direction of the court of county commissioners; which court is authorised to make all necessary contracts for that purpose.

Court house in charge of sheriff.

§ 767. The sheriff has charge of the court house, and must prevent trespasses, keep out intruders, and keep it and the ground attached thereto in order; reporting from time to time the repairs required to the court of county commissioners.

Court of county commissioners to erect buildings.

§ 768. It is the duty of the court of county commissioners of each county, to erect a court house, jail, and the other necessary county buildings; and such court has authority to levy a special tax for that purpose.

County jail.

§ 769. The county jail must be of sufficient size and strength to contain and keep securely the prisoners and debtors which may be confined therein; and must contain at least three apartments, properly ventilated, so as to secure the health of those confined therein; one for debtors; one for criminals; and one for females.

Tax to be levied for building jail.

§ 770. It is the duty of the court of county commissioners of each county, within six months after the adoption of this code, if there is not a sufficient jail in their county, to levy a county tax for the erection thereof, and cause proposals to be issued for building or repairing the same, within twelve months thereafter.

Penalty for neglect.

§ 771. If the court of county commissioners fail to make the levy as aforesaid, and to erect a county jail, corresponding with the provisions of section 769, the persons composing said court are severally guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars; but any member thereof may exonerate himself from such fine by proving that he was in favor of levying a tax sufficient for the erection or repair of the county jail, but was overruled by his colleagues.

Grand jury to inspect jail.

§ 772. It is the duty of the grand jury to inspect the jails of their county; and if it be found that such jail is not constructed in the manner prescribed by section 769, and so strongly and securely built as to prevent the escape of prisoners confined therein, and properly ventilated, they must, after twelve months from the adoption of this code, or from the time when the provisions thereof take effect, and as often thereafter as may be necessary, cause the persons composing the court of county commissioners, at the time such jail was

insufficient, to be indicted; and it is the duty of the judges of the circuit court to give this law in charge of the grand jury.

Claims against county.

§ 773. The court of county commissioners must, in term time, audit all claims against their respective counties; and every claim, or such part thereof, as is allowed, must be registered in a book kept for that purpose; and the judge of probate must give the claimant a warrant on the treasury for the amount so allowed.

Claim; when withdrawn.

§ 774. If the claim is rejected, or not allowed in full, the claimant may withdraw the same.

When barred.

§ 775. All claims against counties must be presented for allowance within twelve months after they accrue, or become payable, or the same are barred, unless holden by minors or lunatics, who are allowed twelve months after the removal of such disability.

CHAPTER II.

COUNTY REVENUE.

ARTICLE 1. How raised and collected.
" 2. County treasurer.

ARTICLE I.

How raised and collected.

SEC.
776. County levy, by whom assessed, by whom collected.
777. What money receivable.
778. } County tax on suits. On licen-
779. } ses.
780. Judge of probate to make return, and pay over money, &c.
781. Circuit clerk's statement of fines and money received.
782. Sheriff to pay over money received for county, &c.
783. Penalties for neglect of these duties; notice to solicitor.
784. Penalty on treasurer for failure to give such notice.
785. Proceedings against defaulters to county.
786. Commissions of tax collector.

County tax; how levied and collected.

§ 776. The court of county commissioners must, in each year, levy a tax for county purposes, not exceeding one hundred per cent. on the amount of the state assessment; and for the amount so levied, the court must issue its warrant to the tax collector, who must collect the same at the same time and in the same manner as the state tax is collected; and all taxes, collected under such warrant, he must pay to the county treasurer, at such times as the court may prescribe.

Funds receivable.

§ 777. Such court may direct the tax collector to receive any current coin or bank bills.

County tax on suits in the circuit court.

§ 778. The sum of two dollars must be charged by the clerk of the circuit court of each county in the bill of costs, on every suit or motion for the recovery of money, claim of

property, contestation of garnishee's answer, and on every conviction on any indictment, which when collected must be paid to the county treasurer.

On licenses, &c.

§ 779. The judge of probate of each county must collect on all licenses, and other sources of state revenue collected by him, the per centage, levied by the court of county commissioners for county purposes.

Judge of probate to return a statement of tax received by him.

§ 780. Each judge of probate must, by the first Monday in January, render to the county treasurer a statement in writing, and on oath, of the amount received by him for the county, up to the first day of the year, stating from whom, for what purpose, and the amount received; and must pay over the same, deducting five per cent. therefrom for his compensation, to the county treasurer.

Clerk of circuit court to return a statement.

§ 781. The clerks of the circuit courts must, within ten days after each term, render to the county treasurer a statement, in writing, and on oath, of the fines assessed during such term, the amount of each, and against whom, and also what money he has received for the county; specifying from whom, on what account, and the amount in each case; and after deducting from such amount five per cent. for his compensation, must pay the balance to the county treasurer.

Statement of sheriff.

§ 782. The sheriff of each county must, three days before each term of the circuit court in their respective counties, render to the county treasurer a statement, in writing, and on oath, of the moneys received by him for the county; specifying the amount received in each case, from whom, and after deducting from such amount five per cent. for his compensation, pay the balance to the county treasurer.

Penalty for failure to return statements and pay over money. Notice of failure.

§ 783. Any officer failing to observe the provisions of the three preceding sections, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than one hundred dollars; and the county treasurer must give notice thereof to the solicitor by the second day of the circuit court next thereafter, who must present the same to the grand jury.

Penalty for failure to give notice.

§ 784. Any county treasurer failing to give the notice as, and within the time, required by the preceding section, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Proceedings against defaulters.

§ 785. If any tax collector, judge of probate, sheriff, clerk, or other officer, or person, fails to pay to the county treasurer within the time prescribed by law, or in case no time is fixed by law, on demand of such treasurer, any money he has collected or received for the county; judgment may be recovered against such person, or such officer and his securities, or any or either of them having ten days notice, by motion in the circuit court, in the name of the county of such treasurer, for the amount so collected, or received, with interest from the time fixed for the payment, or from the demand when no time is fixed, ten per centum damages, and costs.

§ 786. The tax collector is allowed the same compensa-

tion for collecting the county taxes as for collecting the state tax. Pay of tax collector.

ARTICLE II.

County treasurer.

SEC.
787. How appointed and removed.
788. } His bond, &c.; failure to give
789. } bond vacates office.
790. }
791. } His oath; his duties.
792. Who incompetent to act.
793. } Books furnished by the county;
794. } annual account recorded.
795. When treasurer refuses to pay allowed claims, &c.
796. Committee to examine his books and vouchers.
797. Penalty for violation of duty.
798. Proceedings on death, or termination of office.
799. Compensation of treasurer; form of accounts.

§ 787. A county treasurer is appointed for three years, and until his successor is qualified, by the court of county commissioners in each county in the state; removable by such court whenever, in its opinion, the public good requires; and with power to declare and supply any vacancy. Appointment. How removed.

§ 788. The county treasurer must give bond, with two sureties, in double of the estimated amount of the county revenue, to be determined by the court of county commissioners; payable to the county, and conditioned to discharge the duties of his office during the time he may continue in office, or discharge any of the duties thereof; which bond is to be approved by the judge of probate, and filed in his office. His bond.

§ 789. If any county treasurer fails to give bond within ten days after his appointment, his office is vacated. Failure to give bond.

§ 790. He must also, before entering on his duties, take an oath to discharge the duties of his office to the best of his ability, so long as he continues to discharge any of the duties thereof; which oath must be filed with his bond. Oath.

§ 791. It is the duty of the county treasurer: His duties are:

1. To receive and keep the money of his county, and disburse the same according to law. To receive county funds.

2. To register, according to the forms herein prescribed, in well bound books, all claims allowed by the court of county commissioners, and presented to him; designating the date of the allowance, when presented, the character of the claim, to whom allowed, and the amount. To register allowed claims.

3. To number, register, and pay all claims in the order in which they are presented; and on payment, to take a receipt for the same, and to mark on the register the word "paid," against the same. To pay claims allowed.

4. To keep a correct account of the receipts and disbursements of all money received by him for the county, according to the forms herein prescribed, charging himself with all moneys so received, of whom, on what account, and the amount; and crediting himself with all payments, stating To keep an account of receipts and disbursements.

the number, and character of the claim, in whose favor, and the amount.

To examine the court and sheriff's dockets.

5. To examine the dockets of the circuit court, and sheriff, semi-annually; to demand and receive all moneys due to the county; and to institute proceedings against defaulters.

To account annually with the court of county comm's.

6. To submit to the court of county commissioners, at the first term in each year, the register of claims; his account for the year balanced; vouchers for the payments; an estimate of the indebtedness of the county for the coming year, and the means of providing for the same.

To give it information when required.

7. To make reports, and give information to the court of county commissioners, when required, respecting all matters relating to the finances of the county.

8. To perform such other duties as are or may be by law required of him.

Certain persons ineligible.

§ 792. No person can hold the office of county treasurer, and judge of probate, county commissioner, sheriff, clerk of the circuit court, tax collector, assessor, or either of such offices at the same time.

Books; how provided.

§ 793. The books of the county treasurer are to be provided at the expense of the county.

Annual account recorded, &c.

§ 794. The annual account of the county treasurer, when examined and approved by the court of county commissioners, must be recorded, and a copy of the same posted at the court house door.

Refusal to pay allowed claims.

§ 795. If any county treasurer fails, on demand, to pay an allowed claim against the county, when there are funds in the treasury to pay the same, judgment may be obtained against him and his securities, or any or either of them having five days' notice, by motion in the name of the party to whom the claim is payable, his legal representatives or assigns, for the amount of the claim, with interest from the demand, ten per centum damages, and costs.

Books and vouchers to be examined.

§ 796. The judge of probate must each year appoint three persons to examine the books and vouchers of the county treasurer, and report the condition of the same.

Penalty.

§ 797. Any county treasurer failing to observe the provisions of this article, is guilty of a misdemeanor.

Death, resignation or removal of treasurer.

§ 798. In case of the resignation, expiration of his term, or removal from office, the county treasurer, or, if he is dead, his personal representatives, must state his account, and deliver all the money, books, papers, and property of the county, to his successor, who must report the same to the term of the court of county commissioners held next thereafter, and if satisfied that such account is correct, and that all the money, books, papers, and property of the county have been delivered to such successor, such court must cause an entry thereof to be made of record, and the official bond of the former treasurer to be delivered up or cancelled.

Pay.

§ 799. The county treasurers receive such compensation as may be allowed by the court of county commissioners, in no case exceeding five per cent. on the money paid out by them.

FORM OF KEEPING COUNTY TREASURERS' ACCOUNTS.

Register of claims against Montgomery county.

WHEN ALLOWED.	WHEN FILED.	CHARACTER OF CLAIM.	NO.	IN WHOSE FAVOR.	AMOUNT.	REMARKS.
1 October, 1852.....	2 October, 1852....	Repairs to jail.....	1..	A. B.....	$ 43 25	Paid 2 October, 1852.
4 June, 1852.....	1 November, 1852..	Jury certificate.....	2..	C. D.....	6 00	Paid 1 January, 1853.

A. B., Treasurer, in account current with Montgomery county.

To Cash Received,			Dr.	By Cash Paid out,				Cr.
OF WHOM REC'D.	ON WHAT ACC'T.	WHEN REC'D.	AM'T.	NO.	WHEN FILED.	CHARACTER OF CLAIM.	IN WHOSE FAVOR.	AM'T.
G. H.....	Taxes for 1852....	10 Dec., 1852....	$2,276 50	1..	2 October, 1852..	Repairs to jail.....	A. B.....	$ 43 25
L. M.....	Licenses.	4 Jan., 1853.....	143 00	2..	1 November, 1852.	Jury certificate.....	C. D.....	6 00

CHAPTER III.

THE CORONER.

SEC.
800. } How appointed, term of office,
801. } how removed.
802. His bond, his oath.
803. Failure to give bond vacates office.
804. } When to discharge duties of
805. } jailor; of sheriff.
806. When sheriff shown to be interested, coroner to act.
SEC.
807. Special coroner, when and by whom appointed.
808. } His duties, additional bond, when
809. } required.
810. Failure to give additional bond, &c.
811. Liability of coroner for neglect of duty, &c.

How appointed.

§ 800. A coroner is appointed by the court of county commissioners, holds office for three years, and until his successor is qualified.

How removed.

§ 801. Such court has power to remove the coroner, when in its opinion the public good requires, and may also declare and supply any vacancy.

Bond.

§ 802. The coroner must give bond in the sum of two thousand dollars, payable and conditioned according to the provisions of section 118; which bond is to be approved by the judge of probate, and must be filed in his office; and he must also take the oath prescribed by the constitution.

Failure to give bond.

§ 803. Failing to give the bond, within ten days after his appointment, he vacates his office.

When jailor.

§ 804. The coroner is the keeper of the jail when the sheriff is imprisoned.

When to discharge duties of sheriff.

§ 805. He must discharge the duties of sheriff:

1. When the office of sheriff is vacant, and until his successor is qualified.
2. When the sheriff is imprisoned.
3. In cases to which the sheriff is a party.
4. In such cases as he is directed by the judge of probate.

If sheriff is proved to be interested.

§ 806. Where the sheriff is interested in any cause or proceeding, such interest not appearing on the face thereof, the judge of probate may, on a proper showing by affidavit, direct the coroner to execute the summons, writ, or other process, in such cause or proceeding.

When and by whom special coroner appointed.

§ 807. The judge of probate has authority to appoint a special coroner:

1. When the coroner has not qualified, or the office is vacant, and the emergency requires such officer.
2. When the coroner is absent from the county, having no deputy therein.
3. When the coroner is imprisoned.
4. When the sheriff and coroner are both parties, or both interested.

Duties of special coroner.

§ 808. A special coroner must discharge the duties of sheriff, in such cases as the coroner is required; and also when the sheriff and coroner are imprisoned, and on the direction of the judge of probate, when they are both parties, or interested.

§ 809. When the coroner is required to discharge the duties of sheriff, the judge of probate may, in his discretion, require him to give an additional bond. Additional bond.

§ 810. If the coroner fails, for ten days after such requisition, to give such additional bond, his office is vacated, and the judge of probate must give notice thereof to the court of county commissioners, at the first term thereafter, or may direct a special term of such court, under the provisions of section 702. Failure to give it vacates his office.

§ 811. For the failure to perform any duty, or the improper or neglectful performance of such duty, or for any wrongful act committed under color of office, by the coroner, or the special coroner, while discharging the duties of sheriff, such coroner and his securities, and such special coroner, are liable to the same penalties, forfeitures, and judgments, given by law against sheriffs in the like cases, to and upon the same proceedings and remedies, as are given by law against sheriffs and their securities. Penalty for neglect of duties.

CHAPTER IV.

COUNTY SURVEYOR.

Sec.		Sec.	
812	By whom appointed; term of office; how removed.	818.	Plat of survey; evidence when notice given.
813		819	Liability and compensation.
814.	His oath and bond.	820	
815	His duties; chain-bearers, &c.		
816			
817.	His fees, when taxed as costs in suit.		

§ 812. A county surveyor is appointed by the court of county commissioners, and holds office for three years, and until his successor is qualified. How appointed.

§ 813. Such court has power to remove this officer, when, in its opinion, the public good requires, and may also declare and supply any vacancy. How removed.

§ 814. Before entering on his duties, he must take the constitutional oath, and must give bond in the sum of two thousand dollars, to be approved by the judge of probate, and filed in his office, payable and conditioned as required by section 118. His bond.

815. It is the duty of this officer faithfully to execute and return all orders of survey directed to him from any court of record in the state, and make all surveys of lands or lots in the county, at the request of any person interested therein, on payment or tender of his probable fees for the same. To make surveys.

§ 816. He must swear his chain-bearers to perform their duties without favor or affection; must make a plat of all lands or lots he surveys, for the person requiring the same; Chain bearers to be sworn.

Plat of lands. and write on the back of such plat the name of his chain-bearers, and also his fees for the same.

When fees taxed as costs. § 817. When a survey is directed by any court of record, the fees of the surveyor are to be taxed in the bill of costs.

Plats; when evidence. § 818. A survey or plat of land made by the county surveyor of lands within his county, signed by him officially, and stating the contents, courses, distances, and designation at the land office, of any land surveyed by him, is presumptive evidence of the facts stated, if the opposite party have notice that such survey is to be made.

Liability of surveyor. § 819. The county surveyor is liable on his official bond for any damages done by a wrongful survey or plat.

Rates of charges. § 820. The court of county commissioners must fix his rates of compensation, as well as that of his chain-bearers and markers.

Title 11.

EDUCATION.*

CHAPTER 1. Township schools.
" 2. University of Alabama.

CHAPTER I.

TOWNSHIP SCHOOLS.

SEC.
821. What are school funds.
822. Townships may hold land and personal property.
823 } Trustees manage the business;
824 } majority may act.
825 } Duties of trustees of township;
826 } penalty for not reporting.
827. Assistant teachers, and apparatus of school.
828 } When townships united — joint
829 } board of trustees.
SEC.
830. Disposition of united fund.
831. Disposition of fund, where no school.
832. Teachers only paid for child's actual attendance.
833. Judge of probate to send abstracts of reports to governor; penalty.

School funds defined. § 821. School funds, within the meaning of this chapter, are the rents of the school lands, as defined by section 501, and the interest of the school funds, as defined by section 373; and are vested in the state, to execute the objects of the grant.

Townships may hold property. § 822. Each township, in its corporate capacity, as created by section 502, may hold of real estate in their respective townships, not exceeding two acres; and personal property to the value of one thousand dollars.

* By the act of 1851-2, provision was made for the establishment of a school for the deaf and dumb.

Trustees.

§ 823. The business of such corporation in relation to the township schools, is managed by the school trustees, elected as provided for in the first article of the first chapter of Title 8, in Part 1.

Majority may act.

§ 824. The acts of a majority of such trustees, or of the one acting, if there be but one, are valid as if done by all.

§ 825. It is the duty of the trustees of each township:

Number of children to be ascertained.

1. To ascertain the number of persons between the ages of eight and twenty-one years residing in their township, and to enter the same on their books.

School districts established.

2. To divide, if necessary, and their school funds are sufficient, their township into convenient school districts.

School in each district for common English branches.

3. To establish in each school district for at least three months in each year, a school for instruction in the common English branches, reading, writing, arithmetic, spelling, grammar, and geography.

Schools; how located.

4. To locate such schools with reference to the convenience of the inhabitants of the township or school district, and to make all contracts, purchases, and payments, for sites for school houses, building, repairing and furnishing the same.

Teachers to be employed.

5. To employ such teachers as they are satisfied are capable of teaching the branches hereinbefore specified; and they may employ teachers in other branches, but the remuneration for such must be paid by special tuition, and not out of the school funds, and must not prejudice the advancement of the scholars in the English branches.

Branches to be taught.

To appoint necessary officers.

6. To appoint, and at pleasure remove, a clerk and treasurer, require bond of the latter officer, prescribe their duties, and fix their compensation.

Income paid teachers of the scholars attending schools.

7. At a special meeting in each year to apportion the annual rent of the school lands and the interest of the school fund, after deducting therefrom the actual expenses occasioned by the exercise of the powers confided to them, equally among the scholars between the ages of eight and twenty-one years, actually attending the township school for three months during such year; to be paid to the teacher employed if he has discharged his duty.

To make an annual report to the judge of probate.

8. To report in writing to the judge of probate of their county, by the first Monday in January in each year, the number of schools in their township, the number of scholars, and the amount of the school fund received and expended the preceding year.

9. To perform such other duties in relation to schools in their townships, as are or may be required of them by law.

Failure to make report.

§ 826. For failing to make the report required by the eighth subdivision of the preceding section, the trustees are each liable to a penalty of twenty dollars, to be recovered by any person suing for the same, before any justice of the peace of the county.

Penalty.

Assistant teachers and books.

§ 827. When the school fund in any township is sufficient, the trustees may procure assistant teachers, or appropriate any surplus to the purchase of books, apparatus, or for tuition

in natural and experimental philosophy, agricultural chemistry, and other studies.

When townships united.

§ 828. Townships in which the school fund is too small to establish a separate school, may unite with other townships adjoining, and unite the funds of such township in employing a teacher, locating the school with reference to the convenience of the inhabitants of the townships so united.

Joint board of trustees.

§ 829. The trustees of the townships so united, form a joint board, to control and direct the school funds of such townships.

Disposition of united income.

§ 830. When a school is established in conformity with the provisions of the two preceding sections, the school fund of each township is to be apportioned among the scholars of such township, between the ages of eight and twenty-one years actually attending the township school for not less than three months in one year, and paid to the teacher according to the seventh subdivision of section 825.

Disposition of fund where there is no township school.

§ 831. If any township is unable from the smallness of the school fund, or from the sparseness of population, to establish a school with any other township, the school fund of such township is to be apportioned between the scholars thereof actually attending a township school in any other township, for three months in any one year, between the ages of eight and twenty-one years, to be paid to the teacher on his affidavit that he taught such school; and that such scholars, designating them by name, attended school the length of time herein required, and producing the certificate of the trustees of the township in which such school was taught, that he discharged his duty as teacher.

Time of attendance is only paid for.

§ 832. No teacher is in any case to be paid more than the tuition fees for each scholar, for the time he attends, as agreed upon between the teacher and the trustees of the township, or townships, if united.

Abstract of trustees' reports to be sent to the governor by judge of probate.

§ 833. The judges of probate of each county must transmit to the governor, one month before each session of the general assembly, an abstract of the reports made to them under the eighth subdivision section 825; and every judge of probate failing so to do, forfeits the sum of one hundred dollars, one half to the person suing for the same, the other to the state; and the certificate of the governor, that he has not received such abstract, is presumptive evidence of such failure.

CHAPTER II.

UNIVERSITY OF ALABAMA.

SEC.
834. University a corporation; its funds.
835. Lands of university; capacity for taking property.
836. Misnomer does not avoid grant or devise to.
837. } Trustees, how elected; term of
838. } office; vacancy.
839. } Who eligible. Trustee's oath.
840. }
841. } Meetings of trustees. Governor
842. } president of board.
SEC.
843. Notice of official meeting given.
844. } Quorum of board. Authority of
845. } trustees.
846. } The treasurer; his bond; may
847. } deposit in state bank.
848. To report to general assembly.
849. Faculty, its authority.
850. } No religious test to be required,
851. } nor sectarian doctrines taught.
852. Compensation of trustees.

University a corporation.

§ 834. From the funds arising from the sale of lands, granted under the sixth section of the act of congress of second March, one thousand eight hundred and nineteen, to the state of Alabama, for the use of a seminary of learning, is established a corporation, styled the University of Alabama, consisting of two trustees from the circuit in which the university is located, and one from each of the other circuits; the governor, judges of the supreme court, and president of such university, who are trustees by virtue of their offices.

Lands vested in the corporation.

§ 835. The title to the lands granted by the United States to this state, as specified in the preceding section, is vested in the University of Alabama; and such corporation can hold and enjoy property of any value purchased by, or granted, bequeathed, or devised to it, for the purposes of the incorporation.

Misnomer not to defeat grant, &c.

§ 836. In case of any gift, grant, will, or other writing, whereby any estate or interest was intended to pass to such corporation, no misnomer defeats or annuls the same when the true intent of the parties can be arrived at; nor does any malfeasance, misuser, or nonuser, on the part of such corporation, create any forfeiture.

Trustees elected.

§ 837. The trustees for the several circuits are elected by the joint vote of the general assembly, and hold office for six years, and until their successors are elected and qualified.

Vacancy; how filled.

§ 838. On the death, resignation, or removal from office of any trustee, the board of trustees can fill such vacancy; the appointment, so made, to continue until the end of the next session of the general assembly, who must elect a trustee to fill the unexpired term.

Who eligible.

§ 839. No person is eligible as trustee who is not thirty years of age, and does not reside in the circuit for which he is chosen.

Trustee's oath.

§ 840. Each trustee, before entering on his duties, must take an oath that he will faithfully discharge his duties as trustee, to the best of his skill and ability, without partiality; which oath must be filed in the office of the judge of probate of the county in which the university is located.

Annual meeting of trustees.

§ 841. A regular meeting of the trustees must be held each year, at such time as may be appointed for conferring degrees; and any three trustees can call special meetings of the board when in their opinion necessary.

Governor president of the board.

§ 842. The governor is ex officio the president of the board of trustees, and in his absence the trustees present must appoint a president for the time being.

Special meetings.

§ 843. When any special meeting of the trustees is called, reasonable notice by mail of the time and cause of such meeting, must be given to all of the other trustees; and at such meeting, no business can be transacted, except that for which such special meeting was called, unless at least seven of the board concur therein.

Quorum of the board.

§ 844. Six trustees, with the governor, or seven, without the governor, form a quorum for the transaction of business, and can act except in such cases as are to the contrary provided.

Authority of the board to expend the income.

§ 845. The trustees are authorised:

1. To expend the proceeds of the university lands hereafter disposed of, and the income from the university fund, and from the institution, in such manner as may best promote the interest of the university.

Elect professors.

2. At any regular meeting to elect a president, professors, and all other necessary officers, prescribe their duties and fix their compensation, or reduce the same; the reduction not to take effect until twelve months after such meeting.

To appoint officers.

3. At any special meeting, to appoint any officer, and fix his compensation until the next general meeting.

Removal of officers.

4. A majority of the whole number of trustees, not including any of the supreme court judges, who are not present, may, at any meeting, remove, for neglect or misconduct, any officer.

Course of studies, &c.

5. To prescribe the course of studies to be pursued, and the price of tuition.

Declare vacancy in the board.

6. To declare vacant the seat of any trustee who absents himself during one entire regular meeting of the board, and is absent at the commencement of the ensuing regular term, or is guilty of any gross immorality.

Pass by-laws.

7. To enact bye laws for the government of the university, and their own body.

Treasurer; his bond.

§ 846. The trustees may, at any meeting, appoint a treasurer, who must give bond, with security, payable to such corporation, in such an amount as the trustees may, from time to time, require, and conditioned and approved as they may direct.

May deposit in state bank.

§ 847. Such treasurer may make a special deposit in the bank of the state of Alabama, at Tuskaloosa, during the time the same is in liquidation, of any funds belonging to the university, and check out the same as occasion requires.

Trustees to report to general assembly.

§ 848. The trustees of the university must report to each regular session of the general assembly, the state of the property and funds committed to their charge, with such suggestions as to them seem advisable.

Faculty; its authority.

§ 849. The president and professors are styled the faculty of the university, and a majority of them have, under the direction of the trustees, authority:

Enforce rules.

1. To enforce the rules and regulations adopted by the trustees for the government of the students; but no student can be expelled except at a regular meeting, and by a majority of the trustees present.

Confer degrees.

2. To confer degrees on any student of the university, or other person, and give suitable diplomas.

3. To exercise such other powers as may be conferred on them by law.

No religious test to be required.

§ 850. No religious qualification or test must be required from any student, trustee, president, professor, or other officer of such university, or as a condition for admission to any privilege therein.

Nor sectarian tenets taught.

§ 851. No sectarian tenets, or principles, must be taught or inculcated at the university, by any officer or instructor therein.

Compensation of trustees.

§ 852. The trustees elected for the circuits, are allowed three dollars for each day they are engaged in their duties as trustees, and three dollars for every twenty miles travel to and from their residence, estimating by the direct mail route, if there be one, and if not, by the land route usually travelled, which, with all other expenses in relation to such university, must be paid, unless otherwise directed, out of the university funds and income.

Title 12.

REGULATIONS OF TRADE AND COMMERCE.

CHAPTER 1. Inspection laws.
" 2. Notaries public.
" 3. Ships and seamen, engineers and steamboats.
" 4. Regulations of the port and harbor of Mobile.
" 5. Cotton-gins and cotton.
" 6. Change-bills, banking privileges, banking associations, and state stock.
" 7. Weights and measures.

CHAPTER I.

INSPECTION LAWS.

SEC. 853. City authorities of Mobile appoint inspectors and prescribe regulations; to be approved by governor.

Inspectors and inspection laws.

§ 853. Inspectors may be appointed, their duties prescribed, their fees fixed, and inspection regulations adopted by the city authorities of Mobile, for the inspection of staves, tobacco, pitch, tar, turpentine, rosin, fish, flour, and oil, within

the limits of the city; but all inspection regulations so adopted, before they are of any force or effect, must be approved by the governor of the state, and published for three successive months in two papers at Mobile, and one at the seat of governmeent.

CHAPTER II.

NOTARIES PUBLIC.

Sec.		Sec.	
854.	How appointed; term of office.	859	To keep a register; on expiration of term, how disposed of.
855	Removal from county vacates office; bond.	861.	Judge to give copies from register.
856		863.	Fees of notaries public.
857	Their authority; seal of office.		
858			

How appointed.

§ 854. A competent number of notaries public for each county in the state, are appointed by the governor, who hold office for three years from the date of their commission.

Removal vacates office.

§ 855. They vacate their office by removal from the county.

Bond.

§ 856. They must give bond with security, to be approved by the judge of probate of the county for which they are appointed, in the sum of two thousand dollars, payable to the state of Alabama, and conditioned faithfully to discharge the duties of such office, so long as they may continue in office, or discharge any of the duties thereof; which bond must be executed, approved, and filed, in the office of the judge of probate, before they enter on the duties of their office.

Authority.

§ 857. Notaries public have authority:

Administer oaths.

1. To administer oaths in all matters incident to the exercise of their office.

Acknowledgment of certain deeds, &c.

2. To take the acknowledgment or proof of instruments of writing, relating to commerce or navigation, and to certify the same, and all other of their official acts, under their seal of office.

To make demands and protest paper.

3. To demand acceptance and payment of bills of exchange, promissory notes, and all other writings which are governed by the commercial law as to days of grace, demand, and notice of non-payment; to protest the same for non-acceptance

To give notice.

or non-payment, and to give notice thereof, as required by law.

4. To exercise such other powers as, according to commercial usage or the laws of this state, may belong to notaries public.

Seal.

§ 858. For the authentication of his official acts, each notary must provide a seal of office, which must present by its impression his name, office, state, and county for which he was appointed.

§ 859. He must keep a fair register of all his official acts, and give a certified copy therefrom, when required, and on payment of his legal fees. Register.

§ 860. In case of the death, resignation, removal, or expiration of his term of office, the registers of any notary must, within thirty days thereafter, be delivered to the judge of probate of the county; and any person having the same in possession, and refusing to deliver them on demand to such judge, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars; and is also liable to an action for the recovery of the same in the name of such judge. Disposition of the register on death or vacation of office.

§ 861. Such register may by such judge be delivered to any other notary of his county, who must give certified copies from the same, to any person making application therefor, on payment of the legal fees. Certified copies of such register.

§ 862. While the register is in possession of the judge of probate, he must give certified copies of the same on application and the payment of the fees therefor, in the same manner as notaries public. Idem.

§ 863. Notaries public are entitled to the following fees: For presenting any bill of exchange for acceptance, or any bill of exchange, promissory note, or other writing, for payment, and protesting the same for non-acceptance, or non-payment, certifying, affixing seal of office, and registering the same, one dollar: for every other protest, certificate, registration, and seal, two dollars: for any oath, certificate, and seal, fifty cents: for giving copies from register, twenty cents for each hundred words, and at that rate: for each certificate, and seal to such copy, twenty-five cents: for giving any other certificate, and affixing seal of office, fifty cents: for taking acknowledgment and proof of conveyances, the same fees as are allowed to other officers for similar services. Notaries' fees.

CHAPTER III.

SHIPS AND SEAMEN, ENGINEERS AND STEAMBOATS.

ARTICLE 1. Ships and seamen.
" 2. Engineers and steamboats.

ARTICLE I.

SEC.
864. List of passengers on arrival of ships, &c.
865, 866. Oaths, by whom administered; list filed.
867. Penalty for failure to file list.
868. Deserters from ship; proceedings to retake.
869, 870. Penalty for harboring deserter; fees of officers.
871. Penalty for engaging seamen, without discharge.

§ 864. Every master of any vessel, arriving from any port,

Lists of crew and passengers on entry of ship to be given and sworn to.

or place out of this state, (except New Orleans) at the port of Mobile, who is by any law of the United States, required to enter such arrival at the customhouse, must, within one day after such arrival, deliver at the mayor's office, on oath, a correct list of every person who arrived in such vessel, first stating the names of the officers and crew; the names of each passenger; the color and sex of each person; and if they are free, or slaves.

Idem.

§ 865. The oath required by the preceding section may be administered by the mayor, or other person authorized, for which he is entitled to a fee of twenty-five cents.

Lists; where filed.

§ 866. The clerk of the city of Mobile must file in his office all such lists, for the inspection of any citizen of the United States, on paying a fee of ten cents.

Penalty for failure to give list.

§ 867. The master of any such vessel arriving in the port of Mobile, failing to make out and deliver the list of his officers, crew, and passengers, as, and within the time required by this article, forfeits the sum of two hundred dollars; one half to the use of the person suing for the same, the other to the use of the city of Mobile.

Sailors deserting ship. Proceedings to apprehend them.

§ 868. If any person who has made an engagement to perform a voyage in any ship, or vessel, at any port or place in this state, deserts, or absents himself from such ship, or vessel, without the leave of the master, or officer commanding in the absence of the master; any justice of the peace, upon complaint thereof being made under oath, must issue his warrant, to apprehend such seaman and bring him before himself, or some other justice; and if it appears that he has made an engagement to perform a voyage; that such voyage has not terminated; and that such seaman has deserted, or absented himself without leave; the justice must commit him to the common jail of the county, there to remain until such ship, or vessel, is ready to proceed on her voyage, or until the master requires his discharge; the master paying the jail fees for each week in advance.

Penalty for harboring or concealing deserter.

§ 869. If any person knowingly conceals, or harbors, any person belonging to any ship, or vessel, he forfeits ten dollars a day, for each day he so harbors or conceals such person, to the use of any person suing for the same.

Fees of officers.

§ 870. The justice issuing the warrant is entitled to fifty cents, and for hearing the testimony, and other necessary orders, to one dollar; and the sheriff, or constable, apprehending such person on such warrant, to three dollars; in each case to be paid by the master.

Penalty for employing hands of other ship.

§ 871. Any master of any vessel, who within this state ships, hires, or receives, any person belonging to any other vessel, without a discharge in writing signed by the master of such vessel, forfeits fifty dollars; one half to the person suing for the same, the other to the use of the county in which such suit is brought.

ARTICLE II.

Engineers and steamboats.

SEC.
872 } Board of engineers, how formed,
873 } &c.
874. May hold property and appoint officers.
875 } Elects directors; compensation
876 } of officers.
877 } Quorum of board; to examine
878 } applicants and give certificates.
879 } Penalty for acting without a cer-
880 } tificate; for employing, &c.
881. Exceptions in case of sickness of engineer.
882. If engineer without certificate, captain and owners liable for injury, &c.
883. If death ensue, representative may sue, &c.
884. And captain or owner employing, guilty of manslaughter.
885. Certificate, when revoked.
SEC.
886. Board to prosecute for acting without a certificate.
887. Fines and fees, how disposed of.
888. Vote of two-thirds to revoke certificate.
889. Fee for certificate.
890. Certificate revoked; when renewed.
891 } Board to survey vessels; give
892 } certificates, &c.
893. Damages in case of loss without certificate.
894. Assessment of damage to goods, made by board.
895. Fees of harbor-master and port wardens.
896 } How goods landed on river;
897 } penalty.
898. Damage to cotton bales in loading, &c.

Board of engineers in Mobile.

§ 872. There is established in the city of Mobile, a board of engineers for the purpose of examining engines of steamboats, engaged in navigating the waters of this state, emptying into Mobile Bay.

A corporation.

Such board consists of a president, and ten directors, incorporated by the name of the President and Directors of the Board of Steamboat Engineers of Mobile; the directors, eleven in number, elected annually, on the first Monday in November, by the votes of the engineers in the city of Mobile, who have obtained a certificate from such corporation; the directors to elect one of their own number president, and in case of any vacancies in the board to fill the same; and to continue in office until their successors are elected, and qualified.

Its powers.

§ 874. Such corporation can hold real and personal property, not exceeding twenty thousand dollars in value; may appoint a secretary, and other necessary officers, sue and be sued, and make by-laws for their government.

Directors elected.

§ 875. Such corporation also conducts the election of directors, as provided for in this article; and any member of such board may administer all oaths necessary to be administered by such board, in the performance of any of their duties.

Pay of officers.

§ 876. The president and other officers receive such compensation as may be fixed by said board, to be paid out of any money belonging to the corporation.

Quorum of board.

§ 877. Any three of such board constitute a quorum for the transaction of business, except in such cases in this article as are to the contrary provided.

§ 878. Such board must examine all applicants, and ascertain their qualifications to act as engineers, and the grade in which they are qualified to act; and if satisfied from such

Board examines applicants and gives certificates of grade.

examination that they are qualified to act as first, or second engineers, must, on the payment of the lawful fees, give them a certificate accordingly; such certificate must specify the grade in which they are qualified to serve, and must be signed by the president and secretary.

Penalty for acting without certificate.

§ 879. If any person not having such certificate, engages or acts as engineer on any boat navigating such waters, or engages or acts out of the grade specified in his certificate, he forfeits the sum of fifty dollars for each trip for which he so engages or acts; one half to the use of the person suing for the same, the other to the corporation.

On captain for employing.

§ 880. If any captain, or owner of any such boat, employs, or permits any person not having such certificate to act as engineer on such boat, or employs, or permits any engineer to act thereon out of the grade specified in such certificate, he forfeits for each trip such person is so employed or acts, two hundred dollars; one half to the use of the person suing for the same, the other to the use of such corporation.

Exceptions.

§ 881. The provisions of the preceding section must not be construed to prevent any engineer acting out of his grade, during the sickness or temporary absence of the engineer in the grade above him.

Action against owner for injury by explosion if engineer not licensed.

§ 882. If any one sustains an injury to his person or property, from the explosion of a boiler, or of any apparatus connected therewith, on any such steamboat, and the person acting thereon as engineer has not obtained such certificate, or is acting out of the grade therein specified, except as provided in section 881, the person sustaining such injury may recover from the captain and owners of such boat, or any one or more of them, treble damages therefor.

On death from injury representative may sue.

§ 883. If such explosion causes a loss of life of any person, the legal representative of such person may recover of the captain and owners, or either owner of them, an amount, as damages, equal to two years' income of such person, which recovery is exclusively for the benefit of the widow, or next of kin; and must be distributed amongst them, as the personal property of the deceased.

Manslaughter in engineer and employer.

§ 884. In case of the loss of life, the captain or owner employing such person to act as engineer without such certificate, or out of the grade therein specified, and the person so employed or acting, is guilty of manslaughter in the first degree.

Certificate revoked for good cause.

§ 885. If any engineer, after obtaining his certificate, is intoxicated while the boat is under way; sleeps upon his watch; or is guilty of any other gross neglect of duty; on complaint and satisfactory proof to such board of engineers, his certificate must be revoked, and publication of such revocation made in some newspaper, published in Mobile, for three successive weeks; after which, if he is knowingly employed as engineer on board of any steamboat, and any life is lost, or injury sustained, by any explosion on such boat while such person is so acting as engineer, such captain

and owner are liable to the same penalties, and recoveries for the benefit of the same persons, as if such engineer had not had a certificate from such board; and in case of loss of life from such explosion, such captain, owner, and engineer, are guilty of manslaughter in the first degree.

Penalty for acting after revocation of certificate.

§ 886. It is the duty of the president and of each member of such board of engineers, to ascertain all persons serving as engineers on board of such boats, not having such certificate, or whose certificate has been revoked, or who are serving out of the grade specified therein, and in such case to institute proceedings for the recovery of the penalties given by this article.

Board to prosecute offenders.

§ 887. All fines and fees collected under this article, to the use of such corporation, after defraying the necessary expenses, constitute a fund in the hands of the board, for the relief of disabled and superanuated engineers.

Fines and fees; how disposed of.

§ 888. No certificate of any engineer can be revoked, except by the vote of two-thirds of the whole number of the board.

Certificate revoked by vote of two-thirds.

§ 889. Each applicant who receives a certificate as first engineer, must pay therefor twenty dollars; and as second engineer, ten dollars to the board, and one dollar to the secretary.

Fee on grant of certificate.

§ 890. After the revocation of a certificate, the engineer, upon making full proof of reformation, satisfactory to such board, may, upon the vote of two-thirds of the whole number, obtain a new certificate, on payment of the sum and fees, prescribed in the preceding section.

Certificate when renewed.

§ 891. No steamboat must carry freight or passengers on any of the navigable waters of this state emptying into the bay of Mobile, without having undergone a thorough survey and examination by the board, harbor master, and wardens of the port of Mobile; and such board are required to make such survey and examination as often as may be necessary; but at least once in each year.

Boats to be examined and surveyed by board.

§ 892. If, on such survey and examination, such boat is found to be well provided in hull and machinery, and in all respects well found, and river worthy, for at least one year thereafter, such board must grant a certificate thereof, and enter the same of record in the port wardens' office.

Certificate if river worthy.

§ 893. If any boat carries freight, or passengers on such waters, without first obtaining such certificate, and renewing the same as often as once in twelve months, the master and owners of such boat are jointly, and severally, liable for all damages to property shipped thereon, from any cause, or accident to the hull, machinery, or otherwise; and in all suits for damages under this section, the burthen of proof rests on such master, or owners; and the certificate of the board of such harbor master, and wardens, is evidence of the transactions of such board.

Penalty for acting without certificate.

§ 894. Any three of such harbor master and wardens are surveyors of damaged property brought into the port of Mo-

Assessment of damage on goods brought into the port.

bile, on any steamboat, vessel, or other water craft, and must, upon every such survey, certify, under their hands, the amount of damages which any owner, or shipper of such property has sustained, and cause entries thereof to be made in a book to be kept in the port wardens' office for that purpose; which surveys and certificates, or certified copies thereof from such book, are evidence in any court of this state.

Fees of harbor master and port wardens.

§ 895. For each survey, and examination of any boat made under this article, and for entering the same of record, and giving a certificate thereof, such harbor master and port wardens are entitled to a fee of five dollars; for each additional certificate, one dollar; for each survey of damaged property, to three dollars a day each; for giving certificate and making entries, one dollar; and for giving a certified copy of such survey, one dollar.

Goods; how landed on river.

§ 896. All masters of steamboats, vessels, and other water craft, navigating any river in this state, must land all goods at the landing for which such goods were shipped, and place them at least ten feet, perpendicular, above the surface of the water, unless the river is too high to admit of the same being so landed; in which case, such goods must be landed on the highest and most secure place, within one hundred yards of such landing.

Penalty for failure.

§ 897. Any master failing to comply with the provisions of the preceding section, and the owners of his boat, vessel, or water craft, are liable, jointly and severally, to a forfeiture, to the owner of such goods, of double the value thereof, to be recovered in any court having jurisdiction.

Damage to bales by cotton hooks.

§ 898. When any cotton bales are damaged by the use of cotton hooks, or otherwise, in loading or unloading of any steamboat, vessel, or water craft, the owner, or master thereof forfeits the freight of the bales so damaged, and is liable to all damages for such injury.

CHAPTER IV.

REGULATIONS OF THE PORT AND HARBOR OF MOBILE.

SEC.		SEC.	
899.	Commissioners of pilotage; how appointed.	907.	Pilot boat to approach nearest vessel, &c.
900.	Vacancy; how and by whom filled.	908.	Pilot who brings vessel in takes her out, &c.
901.	Pilots of Mobile bay; how licensed.	909.	Remedy for intervention.
902.	Certificate of appointment, and oath of pilot.	910. 911.	When pilot's fee is due. Penalty for acting without license.
903.	Pilot must give bond, &c.	912.	Vessel refusing to take pilot liable for half fee.
904.	Commissioners establish fees and regulations.	913.	Notice of sailing given to pilot.
905. 906.	May revoke license for certain causes.	914.	Pay of pilot taken out to sea, &c.; in case of delay, &c.
		915.	When vessel may refuse pilot.

Sec.		Sec.	
916.	Pay of pilot for delivering letters, &c.	922.	Fee to boat taking pilot off.
917.	Fees for pilotage proportioned to draught.	923.	Board to sue for forfeitures.
918.	Penalty for throwing ballast, &c., into bay.	924.	Record of proceedings of commissioners.
919.	Proceedings to recover penalty.	925.	Preserve bonds and affidavits.
920.	Pilots must report the offender.	926. 927.	Must keep an office. Who may sue on pilot's bond.
921.	Branch pilots; how appointed, &c.	928.	Undertaking to act without a license.
		929.	Fees of commissioners.

Commissioners of pilotage; how appointed.

§ 899. Five persons must be appointed by the governor, upon the recommendation of the presidents of the several insurance companies of the city of Mobile, to be styled commissioners of pilotage of the bay and harbor of Mobile; who hold their office for the term of six years, and until their successors are appointed; and before entering upon the duties of their office, must take and subscribe an oath faithfully to perform the duties thereof.

On failure to nominate governor to appoint.

§ 900. Should the presidents of such insurance companies, or a majority fail for thirty days, after the term of office of the commissioners expire, or upon the death, or resignation of any of them, to nominate to the governor suitable persons to fill the office, he must forthwith make such appointment; and should the governor fail for thirty days to make the appointment to fill a vacancy, it may be filled by the surviving members; and the person, so appointed, holds for the unexpired term of his predecessor.

Pilots; how licensed.

§ 901. The commissioners, or a majority of them, have power to grant licenses to persons to act as pilots for either of the bars of the bay of Mobile; having ascertained their fitness, by such inquiry and examination as they may be enabled to make, and upon the certificate of not less than three nautical men, appointed by them for that purpose, that the applicant is well acquainted with the pilot grounds, currents, &c., of the bay, and is qualified to manage and work vessels; but not more than thirty pilots must be appointed for the lower bar of Mobile bay, and not more than ten for the bar of Dog river.

Certificates.

§ 902. The commissioners must give to every person appointed by them, a certificate of his appointment, which must be signed by a majority of the commissioners, or by their chairman by their direction, requiring him previously to take and subscribe the following oath, which one of the commissioners may administer.

Oath of pilots.

I, A. B., do solemnly swear (or affirm, as the case may be,) that I will faithfully, and according to the best of my skill and judgment, perform the duties of a pilot for the bay and harbor of Mobile; and will at all times, wind, weather and health permitting, use my best exertions to repair on board all ships, or vessels, which I shall see, and conceive to be bound for, coming into, or going out of the harbor or bay of Mobile; unless I am well assured some other licensed pilot is then on board the same. That I will, from time to time,

and at all times, make the best dispatch in my power, to convey safely every vessel committed to my charge, coming into, or going out of the bay or harbor of Mobile; and will at all times well and truly observe, follow, and fulfill, to the best of my skill and judgment, all such orders and directions as I may receive from the commissioners of pilotage, relative to all things appertaining to the duty of a pilot. That I will not be interested, directly or indirectly, in the earnings of more than two pilot boats; nor in the earnings of any combination or copartnership of pilots, composed of more than ten pilots; nor will I be a member, at the same time, of more than one combination or partnership of pilots: So help me God.

Bond of pilots.

§ 903. Before receiving his license, the pilot must make and deliver to the commissioners, a bond, payable to the chairman of the board, and his successors in office, in the penal sum of two thousand dollars, with surety, to be approved by the commissioners, and with condition, faithfully to perform his duties as pilot, which must be renewed every six years.

Commissioners establish regulations and fees.

§ 904. The commissioners have power, and it is their duty, to prescribe rules and regulations for the government of the pilots; and to prescribe the fees for their services; they may also impose such penalties for neglect of duty, not inconsistent with this law, as they may think proper.

License; when revoked.

§ 905. The commissioners may deprive any pilot of his license, for a willful violation of his duties, or the orders or regulations of the commissioners; for negligently or carelessly losing or injuring any vessel in his charge; or when laboring under mental derangement; or so addicted to habits of intoxication as to be unfit to be entrusted with the charge of a vessel.

Other causes of revocation.

§ 906. Any pilot who fails to act as pilot for three months, or absents himself for ten days, at any one time, from the bay or harbor of Mobile, without leave of said commissioners, or a majority of them, may be deprived of his license; and if, at any time, any vessel in the bay or harbor of Mobile is in charge of any civil officer, in virtue of process from any court of record of this state, and any pilot, with knowledge thereof, conducts or pilots such vessel out of the bay or harbor of Mobile, whilst in charge of such civil officer, such pilot forfeits his license, and is forever disqualified from acting as pilot, and also forfeits such sum as the jury shall assess.

Nearest vessel to be boarded. Exception.

Penalty.

§ 907. Every pilot boat cruising, or standing out to sea, must offer the services of a pilot to the vessel nearest the bar, unless a vessel more distant is in distress, under the penalty of fifty dollars for each and every neglect or refusal, either to approach the nearest vessel, or to aid her if required; or to aid any vessel in sight showing signals of distress; and the commissioners, or a majority of them, for such neglect or refusal, may deprive the pilot of his license.

§ 908. The pilot who brings a vessel into port, has the

exclusive right of taking her out, unless the master of such vessel proves, to the satisfaction of the commissioners, that such pilot misbehaved himself whilst in charge of the vessel, or has in the mean time been deprived of his license; and, in either case, another pilot may be employed. Any pilot having the right to take a vessel out of port, may attend in person, or procure another person out of the pilot boat to which he is attached, to attend for him; but if he fail to attend, or substitute another in his place, the master of the vessel having given notice, as hereinafter required, of his intended departure, is at liberty to employ another pilot, who must, if not previously engaged, pilot the vessel out, and is entitled to the fee therefor. Pilot bringing vessel in has the right to take her out.

§ 909. Any person who pilots a vessel out, not being entitled to do so, is liable to the pilot who had the right, for the amount due, or paid, for carrying the vessel out. Remedy for violation.

§ 910. A pilot who has brought a vessel into port, is entitled to his fees before her departure from port, to be paid in advance, or security given for the payment; and on failure thereof, may refuse to carry the vessel out. Fees; when due.

§ 911. Any person piloting, or conducting any vessel in or out of the bay of Mobile, or over any of the bars thereof, without a license as pilot; or who has forfeited or been deprived of his license, is entitled to no fee or reward for the service; and every such act is a misdemeanor, and, on conviction, such person must be fined one hundred dollars. But any person may assist a vessel in distress, without a pilot on board, if such person shall deliver up the vessel to the first pilot who comes on board, and offers to conduct the vessel. Penalty for piloting without a license.

§ 912. Any master of a vessel bearing towards the port or harbor of Mobile, except coasters, and other vessels trading between the ports of Mobile, New Orleans, and Pensacola, who refuses to receive a pilot on board, is liable, on his arrival in the bay or harbor of Mobile, to pay the first pilot who offered his services outside the bar, and exhibited his license as pilot, if demanded by the master, one half the rate of pilotage allowed a vessel of such draft. Vessel refusing a pilot liable for half fees.

§ 913. The master of a vessel in readiness to leave, must, if practicable, give notice to the pilot who conducted his vessel in, of his intention to leave. Where personal notice cannot be given, the following is a substitute: vessels lying in the lower bay must hoist a jack at the foremast head, twenty-four hours before leaving. All vessels going down from Mobile, shall bring the north end of Dauphin island to bear west, before they are allowed to employ any other pilot or pilots than those who conducted them in. Notice of sailing to be given to pilot.

§ 914. If the master of a vessel retain a pilot on board of his vessel, the wind and weather permitting her going to sea, the pilot is entitled to receive three dollars per day for every day he is so detained. If any master of a vessel carries off a pilot from the bay or harbor of Mobile, he must pay such pilot two dollars per day, for every day he is absent; and Pay of pilot detained. Carried out to sea.

supply him with such provisions as is usual for the maintainance of masters of vessels; and the master, as well as the owner, is liable for the same. But if such vessel has laid to for the space of four hours, after crossing the bar, and no pilot boat appear to receive such pilot on board, no such claim shall be allowed.

Half rates if vessel crosses one bar without pilot.

§ 915. Whenever a vessel is crossing over, or is inside either of the bars of the bay or harbor of Mobile, it is at the option of the master to take or refuse a pilot. If the master requires a pilot, he must indicate it by a signal, and the nearest pilot boat must furnish a pilot; and the pilot so officiating is entitled to one half the rate of pilotage allowed for a vessel of such draft. Any pilot refusing to board a vessel, whenever required as aforesaid, must be deprived of his license, and forfeits one hundred dollars.

Letters for vessel coming in.

§ 916. It is the duty of every outer bay pilot, to deliver to the master of any and every vessel approaching the bay or harbor of Mobile, as soon as he can board such vessel, all letters which may be sent to him for that purpose, on the person who requires the delivery of such letters paying, or securing to the pilot, the sum of forty dollars for such service; unless the pilot so employed to deliver letters is engaged as pilot for the vessel; in which event he is entitled to five dollars for the service.

Fee.

Rates of pilotage.

§ 917. The master, owner, or consignee of every ship, or vessel, must pay the pilot who conducts a vessel into or out of the bay and harbor of Mobile, at the following rates, for the actual draft of water of such vessel at the time of pilotage, viz: On every vessel crossing the outer bar of Mobile bay, drawing not more than ten feet water, two dollars and fifty cents per foot; on every vessel drawing ten, and not exceeding twelve feet water, two dollars and seventy-five cents per foot; on all vessels drawing more than twelve feet, and not exceeding fourteen feet, three dollars per foot; and on all vessels drawing more than fourteen feet water, three dollars and fifty cents per foot; on all vessels crossing Dog river bar, of whatever draft of water, one dollar and fifty cents per foot.

Penalty for throwing ballast into bay of Mobile.

§ 918. If any master of a vessel, or water craft of any description, throws, causes, or permits to be thrown from on board such vessel or water craft, into the waters of the bay or harbor of Mobile, or within three miles of the outside of the outer bar of the harbor, any stone, gravel, or other ballast, he forfeits a sum not less than one thousand, or more than two thousand dollars for every such offence; and may be imprisoned, not exceeding three months, at the discretion of the court; one half the forfeiture to be paid to any one who first gives information of the offence to the commissioners, and the other half to the use of the commissioners.

Proceedings to recover the penalty.

§ 919. Upon the commissioners receiving satisfactory evidence of the offence specified in the preceding section, they must proceed to recover such forfeiture by process of attach-

ment in the name of the state, which may be issued as other attachments, on the oath of the informer, and be levied on the vessel from which the offence was committed. The vessel may be replevied by the master, owner, or consignee, by giving bond, payable to the state, in treble the amount of the penalty, with condition to have the vessel forthcoming, to satisfy such judgment as may be rendered in the suit.

Pilot to report offender.

§ 920. Every pilot having knowledge of the commission of the offence specified in the two preceding sections, must, as soon as practicable thereafter, give information thereof to the commissioners; and failing so to do, must be deprived of his license, and be forever thereafter disqualified for the office of pilot of the bay, or harbor of Mobile. The southern boundary, or limit of the bay, or harbor of Mobile, is hereby declared to be the bar known as the outer bar, about two miles to the southward of Dauphin island.

Branch pilots; how appointed.

§ 921. All branch pilots are appointed by the commissioners, and whenever a vacancy occurs in a branch, the person who has served the longest time as an apprentice, must, if deemed competent by the commissioners, be appointed to such vacancy. But no person can hold a branch who is not engaged in piloting.

Fee to boat taking pilot off.

§ 922. When any pilot boat, belonging to a different pilot than the one who may have conducted a vessel out to sea, takes such pilot off from such vessel, such pilot boat is entitled to one third of the pilotage.

Fines; how sued for.

§ 923. The board of commissioners are hereby authorized in their own names, as commissioners, or in that of their chairman as such, to sue for, and recover to their own use, any forfeiture which may accrue under this chapter, which is not otherwise specifically appropriated.

Commissioners to keep a record of their proceedings.

§ 924. The commissioners must preserve, in a well bound book, a record of all their acts, and of the rules and regulations adopted by them, for the direction and government of the pilots. They must designate one of their number as chairman, and cause a record thereof to be made, and prescribe such fees for the services of the pilots, and impose such fines and penalties not inconsistent with the provisions of this chapter, as they may deem expedient. They must also preserve, upon record, a list of all persons appointed pilots by them, as well as of those whom they may declare to have forfeited their license. All persons interested must have access to, and be permitted to take copies of the records, and copies thereof, certified by the chairman, are presumptive evidence of the facts stated therein.

Bonds and affidavits to be filed.

§ 925. They must preserve on file all bonds and affidavits taken from pilots, and may, whenever they consider it necessary, require a new bond to be executed.

Their office.

§ 926. They must keep their office in some suitable place, of which the public shall have notice; and may keep their books and papers in the office of the probate judge.

Who may sue on pilot's bond.

§ 927. The bonds aforesaid stand as a security for any injury caused by the negligence, or want of skill of the pilot, and may be put in suit in the name of any person aggrieved.

Penalty for assuming to act without license.

§ 928. Any person undertaking to act as pilot, without a license, as required by the provisions of this chapter, or after he has been notified by the commissioners that his license has been revoked, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Commissioners' fees.

§ 929. The fees of the commissioners for services rendered, are as follows: For every license granted, ten dollars; for taking and filing bond and affidavit, one dollar; giving copies from records for each hundred words, twenty cents; certifying the same, fifty cents.

CHAPTER V.

COTTON GINS AND COTTON.

Sec.		Sec.	
930.	Name and county of owner of gin marked on bales.	933.	No charge for storage unless cotton under shelter. Penalty.
931.	Deductions from true weight.	934.	
932.	Penalty.		

Cotton bales to be marked.

§ 930. All owners of cotton gins must mark upon each bale of cotton ginned at such gins, the initials of their names, and the county in which such gin is situated; and failing so to do, are liable to a penalty of five dollars on each bale, to be recovered by any person suing for the same.

Weight of bales.

§ 931. No commission merchant, warehouse keeper, or other person, must, in any case, make a deduction from the true weight of any square bale of cotton; and all contracts in reference thereto must be construed as referring to the actual weight thereof.

Penalty.

§ 932. Any violation of the preceding section incurs a forfeiture of ten dollars for each bale, from which such deduction is made.

Cotton to be stored under cover.

§ 933. No commission merchant, warehouse keeper, or any other person, must make any charge for storage of cotton in Mobile, or for damage to the bagging or rope thereof, unless the cotton for which such charge was made was actually stored in some building under cover, for the time for which such storage or damage is charged.

Penalty.

§ 934. Any person violating the provisions of the preceding section incurs a penalty of five dollars for each bale on which such storage, or damage, is charged, to be recovered by any person suing for the same.

CHAPTER VI.

CHANGE BILLS, BANKING PRIVILEGES, BANKING ASSOCIATIONS, AND STATE STOCK.

ARTICLE 1. Change bills.
" 2. Banks and banking privileges.
" 3. State stocks.

ARTICLE I.

Change bills.

SEC.
935. Liability for issuing notes, &c., for circulation.
936. Liability of corporation for paying out such paper.

§ 935. Every bill of exchange, note, bond, or instrument of any description, whatever may be its form, or device, issued with the intent to circulate the same as money, without authority of law, is an absolute, unconditional promise of the association, or person, putting such bill, note, or other instrument in circulation, and may be sued on by the holder thereof, without transfer or assignment, and without demand, protest, or notice, and the amount thereof recovered, with interest thereon, at the rate of fifty per cent. per annum, from the date thereof, or from the time the same was put in circulation.

Suits on paper issued to circulate as money.

§ 936. No turnpike, bridge, or railroad company, incorporated under any law of this state, must pay out by their agents, or officers, any change bills, notes, or paper, issued without authority of law, the circulation, or passing of which is prohibited by the laws of this state; and if such corporation allows the same, it incurs a forfeiture of its charter.

Corporations not to pay out change bills.

ARTICLE II.

Banks and banking privileges.

SEC.
937. Proceedings when banks fail to pay their bills.
938. Failure to pay forfeits' charter; proceedings, &c.
939. Agents of foreign banks to use only gold and silver.
940. } Penalty. Forfeiture.
941. }

§ 937. The bearer of any bill or note issued by any stock bank, incorporated under any law of this state, may, at any time, present such bill or note for payment; and if the same is not paid, may recover judgment against such bank by motion, on three days' notice to its president, or cashier, before any court having jurisdiction, for the amount of such bill, or note, interest from the time of such presentment, at the rate of twelve per cent. per annum, and costs.

Banks refusing to pay notes.

Remedy.

Penalty.

§ 938. Any stock bank, created under any law of this state, forfeits its charter by failing to pay its bills, or notes, issued for circulation, on presentment; and the governor, upon information of such failure, must direct the solicitor of the circuit in which such bank is situated, to proceed against the same, and may associate with such solicitor other counsel.

Gold and silver only to be used by agent.

§ 939. No foreign corporation, invested with the privilege of banking, must exercise the same by agent in this state, except by the exclusive use of gold and silver coin, and bank bills issued by the authority of this state.

Penalty.

§ 940. Any agent violating the provisions of the preceding section, is guilty of a misdemeanor, and, on conviction, must be fined not less than two thousand dollars.

Notes and bills void.

§ 941. If any corporation, or agent, violates the provisions of this article, or attempts to evade the same in the discount of any bill, or note, such bill or note is void.

ARTICLE III.

State stocks.

SEC.
942. Certificates, how assignable.
943. In case of loss of certificate.
944 } New certificate to be issued; en-
945 } tered by comptroller.
946. When renewed to assignee or interest paid him.
947. Provisions relate to renewals after adoption of code.

Assignable.

§ 942. Certificates of state stock are assignable by endorsement, or by transfer in books to be kept for that purpose by the comptroller.

Proceedings on loss of certificate.

§ 943. The holder of any state stock, the certificate of which is lost or destroyed, must:

1. Give notice of his intended application to renew the same, by publication in some newspaper in the state or county, in which the loan was made on which such stock was issued, for three successive months.

2. Make proof of such loss, or destruction, before any chancellor, or judge of the circuit court of this state, or any judge of a court of record out of the state; which judge must certify such proof, and his opinion that the same was satisfactory.

3. Make affidavit that at the time of such loss, or destruction, he was the true holder and owner of such certificate.

4. Execute a bond, with surety to be approved by the comptroller, in double the amount of such certificate, payable to the state of Alabama, and conditioned to save harmless, and indemnify the state against all loss or damage which may result from the renewal of such certificate.

New certificate.

§ 944. Upon the requisitions of the preceding section being complied with, a new certificate of stock must be issued, signed by the governor, comptroller, and treasurer, express-

ing on its face a description of the original, and that the same has been issued in the place thereof.

§ 945. Such renewed certificates must be entered, and an account kept of the interest paid thereon, by the comptroller; and all renewed certificates are as valid as the originals. Idem.

§ 946. No certificate must be renewed to an assignee, unless the transfer appear on the books of the comptroller; or unless the endorsement has been attested by a notary public, and due proof of the same made; nor must any payment of principal or interest be made to any person as the assignee of any certificate, unless such assignment appears on the books of such comptroller, or as provided in this section. When renewed to assignee.

§ 947. The provisions of this chapter must be construed only to operate upon transfers, endorsements, and renewals, made after the adoption of this code. Cases covered by this law.

CHAPTER VII.

WEIGHTS AND MEASURES.

SEC.	
948. Standard of weights, &c.	952. Judge of probate to publish the receipt of.
949. Contracts construed in reference to.	953 } Judge to test and seal weights,
950. Standards, how furnished counties.	954 } &c.; his fee.
951. Payment for standards, how made.	955. Penalty for selling by weights, &c., differing from.

§ 948. There is but one standard of measure, of length and surface; one of weight, and one of capacity, throughout this state, which must be in conformity with the standard of measure, length, surface, and weight, established by congress. Standard.

§ 949. All contracts made within this state for any work to be done, or for any thing to be sold and delivered, must be construed to have been made according to the standard of weight and measure thus ascertained, unless the parties stipulate to the contrary. Contracts in reference to.

§ 950. Any county which has not been furnished with weights and measures, consisting of one weight of fifty pounds, one of twenty-five pounds, one of fourteen pounds, one of seven pounds, two of four pounds, two of two pounds, and two of one pound avoirdupois; one measure of one yard, and one of one foot, cloth measure; one measure of a half bushel, one of one peck, and one of one half peck, dry measure; one measure of one gallon, one of a half gallon, one of one quart, one of one pint, one of one half pint, and one of one gill, wine measure, in conformity with such standard, must be supplied therewith, by the secretary of state, as early as practicable. How procured.

§ 951. For the expense of obtaining such weights and measures, and furnishing the same to such counties, the Expence of obtaining.

comptroller must, on the account being certified by the secretary of state, draw his warrant on the state treasury.

Notice of standards.

§ 952. The judges of probate of each county, when furnished with such weights and measures, must, within three weeks thereafter, give notice thereof by advertisement, at the court-house door, and at five other public places in the county.

Seal of weights and measures.

§ 953. Such judges must try all weights and measures presented them, by such standard, and if found to agree with the same, must seal them, with a seal, to be provided at the expense of the county.

Fee to judge.

§ 954. For trying and sealing such weights and measures, the judges are entitled to twenty-five cents for each weight and measure, so sealed; to be paid by the person presenting the same.

False weights and measures.

Penalty.

§ 955. Three months after the notice prescribed in this chapter has been given, every person selling any commodity by weight or measure, which does not correspond with such standard, forfeits the sum of ten dollars, to any person suing for the same.

Title 13.

POLICE AND SANITARY REGULATIONS.

CHAPTER 1. Hospitals, disease, infection, and quarantine.
" 2. Physicians, surgeons, and dentists.
" 3. Patrols.
" 4. Slaves and free negroes.
" 5. Retailers.
" 6. Estrays and animals running at large.
" 7. Marks and brands.
" 8. Enclosures, trespassing animals, and partition fences.
" 9. Mills and millers.
" 10. Fire hunting.
" 11. Unwholesome provisions.
" 12. For the prevention of injury by the storage of gunpowder in towns, &c.
" 13. For the preservation of oysters in the state.
" 14. Roads, bridges, ferries, and water-courses.
" 15. Provision for the poor.

CHAPTER I.

HOSPITALS, DISEASE, INFECTION, AND QUARANTINE.

SEC.
956. Hospitals, how established; regulations.
957. Nuisances to health, how abated; strangers with infectious disease, how disposed of.
958. Powers to execute warrant; pass to hospital.
SEC.
959, 960. Quarantine; how established; regulations.
961, 962. To what regulations extend; penalty for violation.
963. Vessel infected, to be purified.
964. Health officer may require information on oath.

SEC.
965. Duties of captain of ship quarantined; penalty.
966. Escape from quarantine; re-arrested.
967. Travellers by land from infected district.
968, 969, 970. Expenses of quarantine; fines; meaning of *town*.

Hospitals established.

§ 956. The corporate authorities of any town, or the court of county commissioners of any county, may establish in such county or town, hospitals, which are subject to such regulations, not contrary to law, made by such corporate authorities, or such court.

Nuisances to health.

§ 957. When any health officer in any town makes complaint, on oath, that there is good cause of suspicion, or belief, that there is on any lot, or in any house in such town, or in any vessel within the limits, or in the vicinity thereof, any cause of disease, or infection, necessary to be destroyed, or removed, or one or more persons, not in his own place of residence, infected with a dangerous contagious disease, and that he has been refused admittance into such house, lot, or vessel; any justice of the corporation, or of the county, in which such house, lot, or vessel is, may issue his warrant, directed to the sheriff, marshal, constable, or other executive officer of such town, requiring him to enter such house, lot, or vessel, and, under the direction of such health officer, to remove such infected person, or to remove or destroy such source of infection or disease.

Strangers with contagious diseases.

Warrant; how executed.

§ 958. To execute such warrant, any outer or inner door may be forced in the day time, and all expenses incurred in executing the provisions of the preceding section, and for maintaining, nursing, and curing any person removed under the provisions of this chapter, must be paid by such person, or by the owner of the house, lot, or vessel, as the case may be; or if such person, or owner, is a married woman, by her husband; if a minor, by his parent, or guardian; and if a slave, by his owner; and if not so paid, then by the town in which they were incurred; the person by whom such expenses should have been paid being liable to such town for the amount thereof.

Pay for nursing, &c.

Quarantine.

§ 959. Any town may establish a quarantine ground therefor; but if the place fixed upon for that purpose is without the limits of such town, the assent of the court of county commissioners of the county in which such place is, must first be obtained.

Regulations.

§ 960. The corporate authorities of such town may, from time to time, prescribe the quarantine to be observed by all vessels arriving within the harbor or vicinity of such town, and regulations therefor, not contrary to law.

Idem.

§ 961. Such regulations may extend to all persons, goods, and effects, arriving in such vessel, and to all persons going on board of the same.

Penalty for violation.

§ 962. If any person violate such regulations, after notice thereof has been given for five days in some newspaper printed in such town; or when there is none, by notice

posted up at some public place therein for the same length of time, he is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than fifty dollars.

Vessels quarantined.

§ 963. The health officer of such town may, under the direction of the corporate authorities, cause any vessel arriving therein, or in the vicinity, if the vessel, or cargo, is in his opinion so foul or infected as to endanger the public health, to be removed to the quarantine ground, or other proper place, to be purified.

Refusal of information to health officer. Penalty.

§ 964. If any master, seaman, or passenger, belonging to any vessel supposed to have any infection on board, or from a port where any dangerous infectious disease prevails, refuses to answer on oath such inquiries as are made by any health officer, relating to any infection or disease, he is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Breach of quarantine.

§ 965. The master of any vessel ordered to perform quarantine, must deliver to the officer appointed to see it performed his bill of health, and manifest, log book, and journal: if he fail so to do, or to repair in proper time, after notice, to the quarantine ground, and departs thence without authority, he is guilty of a misdemeanor, and, on conviction, must be fined not less than two hundred dollars.

Penalty.

Escapes from quarantine.

§ 966. If any person ordered to perform quarantine escapes, any justice on complaint thereof on oath, must issue his warrant to the sheriff, constable, or town marshal, to arrest and deliver such person to the custody of the officers of the quarantine; and any such person attempting to escape may be forcibly detained at the place of quarantine by such officers.

Travellers by land.

§ 967. Any person coming into town, by land, from a place infected with a contagious disease, may be compelled to perform quarantine by the health officer, and restrained from travelling until discharged; and any person thus restrained, travelling before he is discharged, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Expenses of quarantine.

§ 968. All expenses incurred by any town, on account of any person, vessel or goods, under quarantine regulations, must be paid or reimbursed by such person, or the owner, if he is a slave; or in case of a vessel, or goods, by the owner thereof; and the town may detain such slave, vessel, or goods, until such expenses are paid.

Fines.

§ 969. All fines recovered under this chapter must be paid into the town treasury.

Town defined.

§ 970. The word "town" in this chapter includes a city.

CHAPTER II.

PHYSICIANS, SURGEONS, AND DENTISTS.

SEC.	
971.	Medical boards continued.
972. 973.	Examination and license of applicants.
974.	License signed and recorded.
975. 976.	License; how proved. Penalty for practicing dentistry without license.
977.	Contracts void if party not licensed.
978.	Notice to produce license when given in suits.
979.	Negro not to be employed in selling drugs, &c. Penalty.
980. 981.	Druggists to obtain license, &c. Fee of judge of probate.
982.	Not to apply to Thompsonian doctors.

Medical boards.

§ 971. The medical boards and societies established by law in this state are continued.

Examination of applicants.

§ 972. Such medical boards must examine all applicants for practice, and also examine their diplomas, or licenses, which must, in all cases, be from a respectable college or institution.

License. Fee.

§ 973. If found duly qualified, and of good moral character, such board must grant a license to practice physic, surgery, and dental surgery, or any one or more of such branches; for which the applicant must pay five dollars for the use of the board.

License recorded.

§ 974. Such license must be signed by the president of the board, and countersigned by the secretary and judge of probate of the county in which such medical board is established; and the name of the person and the branches in which he is licensed to practice, must be registered on his books; for which registration such judge is entitled to a fee of fifty cents.

Proof of license.

§ 975. The production of such license, or the certificate of the judge of probate, that the name of such person is registered on his books as a licensed physician, surgeon, or dentist, is proof of such fact.

Penalty for practicing dentistry without license.

§ 976. Every person practicing dental surgery, without a license from a medical board in this state, forfeits fifty dollars; one half to the person sueing for the same, the other to the use of the county.

Contracts void if doctor not licensed.

§ 977. Every contract, the consideration of which is founded upon services rendered as a physician, surgeon, or dentist, is void, unless the person rendering such services has obtained a license to practice in such capacity from one of the medical boards of this state.

Notice to produce license.

§ 978. In any suit founded on any contract for services as a physician, surgeon, or dentist, no proof is required to be made that the person rendering such service was licensed as required, except on two days' notice by the opposite party that such proof will be required on the trial.

Negroes not to sell drugs.

§ 979. No person must employ any free negro or slave to sell, or assist in the sale of drugs or medicines sold by retail; any violation of this section is a misdemeanor, and, on conviction, punished by a fine of not less than one hundred dollars.

Druggists to obtain licenses.

§ 980. All druggists in this state are required to obtain a license to deal in drugs from the medical board of the county in which such business is pursued; or if there is no board in such county, then from the medical board established in the nearest county thereto; and any person violating the provisions of this section, on proof thereof, is not entitled to recover for any drugs or medicines he has sold, and is also guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

Penalty.

Fee.

§ 981. For each certificate given under this chapter, the judge of probate is entitled to a fee of fifty cents.

Thompsonian doctors excepted.

§ 982. The provisions of this chapter do not apply to any person practicing medicine upon the botanical, or Thompsonian system.

CHAPTER III.

PATROLS.

SEC.	
983.	Who liable to patrol duty.
984.	Precincts divided into patrol detachments, leader.
985.	List of detachments, and of the time for service.
986.	List served on leader by constable.
987. 988.	When leader sick or absent, renewal of term of service, &c.
989. 990.	Leader to notify his men, to patrol once a week.
991. 992.	Substitute, authority of patrol.
993.	Punishment of slaves.
994. 995.	Runaway slaves apprehended, carried to owner or justice.
996.	If but one justice in precinct, he to act.
997. 998.	Fine for defaulters; patrol leader to report defaulters, &c.
999.	Penalty for not reporting defaulters.
1000.	Justice to report leader to solicitor, on default.
1001. 1002.	Leader refusing to act, fined; neglect of duty by justice or constable.
1003. 1004.	Fines, how disposed of; violation of duty by patrol, &c.

Who liable to do patrol duty.

§ 983. All white male owners of slaves, below the age of sixty years, and all other free white persons, between the ages of eighteen and forty-five years, who are not disabled by sickness or bodily infirmity, except commissioned officers in the militia, and persons exempt by law from the performance of militia duty, are subject to perform patrol duty.

Detachments of patrol.

§ 984. During the second week of the month of March, in each year, the justices of each precinct in the state, must make out a complete list of all the persons within their precinct, subject to patrol duty; and make division of the whole number, into detachments of not less than four, nor more than six, one of which number must be designated leader of the patrol.

Lists of detachments and term of service.

§ 985. After such enumeration and division is made, a record must be made thereof, which must be retained by the senior justice, who must cause lists to be made of the names of the persons composing each detachment, with the leader

thereof, numbering the list from number one, consecutively, and designating, on each list, when the term of service of the detachment will commence; each detachment being required to serve as patrol, not less than two nor more than three weeks.

Leaders to have notice.

§ 986. The list, so made out, must be delivered to the constable, during the second week in March, and must be by him served on the leader of each detachment, within ten days thereafter, either personally, or by leaving the list at his place of residence.

When leader sick or absent.

§ 987. If the leader of the patrol is sick or absent, the constable must notify the next person on the list, informing him that he is the leader of the patrol detachment.

Notice of renewal of term of service.

§ 988. When the term of service of all the detachments is exhausted, the justice must again cause notice to be given by the constable, to the leader of each detachment, stating when the term of service of each detachment will commence; which must be served in the same manner as the previous notice.

Leader to notify his men.

§ 989. Upon receiving such notice, with a list of the persons comprising the detachment, the leader must, within five days thereafter, notify each member thereof, personally, or by leaving written notice at his place of residence; and designate the time and place of the meeting of the patrol.

To patrol once a week.

§ 990. Each detachment must patrol such parts of the precinct as in their judgment is necessary, at least once a week at night, during their term of service, and oftener, when required so to do by a justice of the peace; or when informed, by a credible person, of evidences of insubordination, or threatened outbreak, or insurrection of the slaves; or of any contemplated unlawful assembly of slaves or free negroes.

Substitute.

§ 991. Any member of a patrol detachment may send a substitute, who, if accepted by the leader, may patrol in his stead.

Authority of patrol.

§ 992. The patrol has power to enter, in a peaceable manner, upon any plantation; to enter by force, if necessary, all negro cabins or quarters, kitchens and out houses, and to apprehend all slaves who may there be found, not belonging to the plantation or household, without a pass from their owner or overseer; or strolling from place to place, without authority.

Punishment of slaves.

§ 993. The patrol has power to punish slaves found under the circumstances recited in the preceding section, by stripes, not exceeding thirty-nine.

Runaways.

§ 994. It is the duty of the patrol, on receiving information that any person is harboring a runaway slave, to make search for such slave, and if found, to apprehend and take him before a justice of the peace, who, if the owner is unknown, must commit him to jail.

Taken before justice or carried to owner.

§ 995. If the patrol find any slave from home without a pass, and under circumstances creating the belief that he is a runaway, they must detain him in custody, and give infor-

mation thereof to the owner, if known; and if unknown, or without their precinct, deliver him up to a justice, who must commit him to jail for safe keeping.

If only one justice in the precinct.

§ 996. If there is but one justice in the precinct, he must perform all the duties required by this chapter; and if there be no justices in office in the precinct on the second Monday in March, the duties here enjoined must be performed the week succeeding his election.

Fine of defaulters.

§ 997. The leader, or any member of the detachment, failing to appear according to the notice, and perform patrol duty, must be fined ten dollars by the justice of the precinct.

Leader to report defaulters.

§ 998. The leader of each patrol must, at the expiration of each term of service, make report in writing, and upon oath, to the justice, of the number of times his detachment has patrolled, and of the absence, without sufficient excuse, of any member of the detachment at the times designated for patrolling, and failure to perform patrol duty; and thereupon it is the duty of the justice to cite such delinquents to appear at a time and place designated by him, and show cause why a fine should not be imposed against him; and upon their failure to appear, or to render a sufficient excuse, they must each be fined ten dollars for each omission, for which execution may issue.

Penalty for not reporting.

§ 999. If the leader of the patrol fails to make such report, within one month after the expiration of his term of service, he is guilty of a misdemeanor, and, on conviction, must be fined in a sum not less than twenty dollars, at the discretion of the jury.

Leader to be reported to solicitor.

§ 1000. The justice must make report in writing, to the solicitor of his circuit, of all omissions on the part of patrol leaders, to make the reports referred to in the two preceding sections.

Leader refusing to act fined.

§ 1001. Every person appointed a leader of the patrol, who refuses, without sufficient excuse, to act as such, must be fined twenty dollars by the justice appointing him; being first cited to appear and show cause against it.

Neglect of duty by justice or constable.

§ 1002. Every justice and constable failing or refusing to perform any of the duties required of them by this chapter, are guilty of a misdemeanor, and, on conviction, must be fined, the justice not less than fifty, and the constable not less than twenty dollars, at the discretion of the jury.

Fines; how disposed of.

§ 1003. All fines collected for a violation of the provisions of this chapter, must be paid by the justice or constable collecting it, into the county treasury; and failing to do so, may be proceeded against by motion in the name of the county treasurer, as for other money collected in their official capacity.

Abuse of authority by patrol.

§ 1004. The patrol, if sued for any act done in the performance of patrol duty, may give this law in evidence under the general issue; but are liable in damages, to any person aggrieved, for any unnecessary violence committed under color of performing patrol duty, either by unnecessarily

breaking or entering houses, or for excessive punishment inflicted on any slave.

CHAPTER IV.

SLAVES AND FREE NEGROES.

ARTICLE 1. Slaves.
" 2. Free negroes.
" 3. Free colored mariners.

ARTICLE I.

Slaves.

SEC.
1005. Slave not to hire himself, penalty.
1006. 1007. Not to remain at one house, &c., permitting unlawful assemblages.
1008. 1009. Not to leave home without pass, punishment for doing so.
1010. 1011. Liability of railroads, steamboats, &c., for taking slaves without pass.
1012. 1013. Slave not to carry gun, &c., penalty, when allowed to do so.
1014. 1015. Slave not keep dog. Justice authority in unlawful assemblages.
1016. 1017. Slave apprehended without warrant. Fire hunting by slave.
1018. 1019. Not to own property; punishment for writing pass for slave.
SEC.
1020. 1021. Unlawful assemblies of, dispersed and punished.
1022. Not to preach without a license, &c.
1023. Runaways taken up, pay for taking up.
1024. 1025. Gangs of runaways, how taken, pay for taking.
1026. Commitment of slave to name owner, &c.
1027. 1028. Advertisement by sheriff, when sold, &c.
1029. Claimant to prove title, proof filed, &c.
1030. Takes slave or purchase money on doing so.
1031. 1032. Irregularity in sale not to annul it. Fees of judge and sheriff.

§ 1005. No master, overseer, or other person having the charge of a slave, must permit such slave to hire himself to another person, or to hire his own time, or to go at large, unless in a corporate town, by consent of the authorities thereof, evidenced by an ordinance of the corporation; and every such offence is a misdemeanor, punishable by fine not less than twenty nor more than one hundred dollars. Slave not to hire himself.

§ 1006. No master, overseer, or head of a family must permit any slave to be or remain at his house, out house, or kitchen, without leave of the owner or overseer, above four hours at any one time; and for every such offence he forfeits ten dollars, to be recovered before any justice of the peace, by any person who may sue for the same. Not to visit for more than four hours.

§ 1007. Any owner or overseer of a plantation, or householder, who knowingly permits more than five negroes, other than his own, to be and remain at his house, plantation, or quarter, at any one time, forfeits ten dollars for each and every one over that number, to the use of any one who may Permitting unlawful assembly. Penalty.

sue for the same, before any justice of the peace; unless such assemblage is for the worship of almighty God, or for burial service, and with the consent of the owner or overseer of such slaves.

Slave to have pass.

§ 1008. No slave must go beyond the limits of the plantation on which he resides, without a pass, or some letter or token from his master or overseer, giving him authority to go and return from a certain place; and if found violating this law, may be apprehended and punished, not exceeding twenty stripes, at the discretion of any justice before whom he may be taken.

Penalty.

Visiting without pass.

§ 1009. If any slave go upon the plantation, or enter the house or out house of any person, without permission in writing from his master or overseer, or in the prosecution of his lawful business, the owner or overseer of such plantation or householder may give, or order such slave to be given, ten lashes on his bare back.

Penalty.

Liability of rail roads, &c., receiving slave without pass.

§ 1010. Any railroad company in whose car or vehicle, and the master or owner of any steamboat, or vessel, in which a slave is transported or carried, without the written authority of the owner or person in charge of such slave, forfeits to the owner the sum of fifty dollars; and if such slave is lost, is liable for his value, and all reasonable expenses attending the prosecution of the suit.

Burthen of proof.

§ 1011. In any action under the preceding section, it devolves on the defendant to prove that the owner has regained possession of the slave.

Slaves not to carry arms.

§ 1012. No slave can keep or carry a gun, powder, shot, club, or other weapon, except the tools given him to work with, unless ordered by his master or overseer to carry such weapon from one place to another. Any slave found offending against the provisions of this section, may be seized, with such weapon, by any one, and carried before any justice, who, upon proof of the offence, must condemn the weapon to the use of such person, and direct that the slave receive thirty-nine lashes on his bare back.

Penalty.

Exception.

§ 1013. Any justice of the peace may, within his own county, grant permission in writing to any slave, on the application of his master or overseer, to carry and use a gun and ammunition within his master's plantation.

Not to keep a dog.

§ 1014. No slave can, under any pretence, keep a dog; and for every such offence must be punished by any justice of the peace with twenty stripes on his bare back. If such dog is kept with the consent of the owner or overseer, he must pay five dollars for every dog so kept, to the use of any person who will sue for the same before any justice: and is also liable to any person for any injury committed by said dogs.

Unlawful assemblies; how punished.

§ 1015. Riots, routs, unlawful assemblies, trespasses, and seditious speeches by a slave, are punished, by the direction of any justice before whom he may be carried, with stripes not exceeding one hundred.

§ 1016. Any person having knowledge of the commission of any offence by a slave against the law, may apprehend him, and take him before a justice of the peace for trial. Slave may be taken without a warrant.

§ 1017. Any slave fire hunting in the night time, must be punished with thirty-nine lashes, by order of any justice before whom he may be carried. If such fire hunting by the slave is by the command of the master or overseer, the slave must not be punished, but the master or overseer forfeits the sum of fifty dollars, one half to the county, and the other half to any person who may sue for the same before any justice of the peace. Fire hunting by a slave.

§ 1018. No slave can own property, and any property purchased or held by a slave, not claimed by the master or owner, must be sold by order of any justice of the peace; one half the proceeds of the sale, after the payment of costs and necessary expenses, to be paid to the informer, and the residue to the county treasury. Not to own property.

§ 1019. Any slave who writes for, or furnishes any other slave with any pass or free paper, on conviction before any justice of the peace, must receive one hundred lashes on his bare back. Slaves writing pass for another. Penalty.

§ 1020. Not more than five male slaves shall assemble together at any place off the plantation, or place to which they belong, with or without passes or permits to be there, unless attended by the master or overseer of such slaves, or unless such slaves are attending the public worship of God, held by white persons. Unlawful assemblies defined.

§ 1021. It is the duty of all patrols, and all officers, civil and military, to disperse all such unlawful assemblies; and each of the slaves constituting such unlawful assembly, must be punished by stripes, not exceeding ten; and for the second offence, may be punished with thirty-nine stripes, at the discretion of any justice of the peace before whom he may be brought. Dispersed and slaves punished.

§ 1022. Any slave who preaches, exhorts, or harangues any assembly of slaves, or of slaves and free persons of color, without a license to preach or exhort from some religious society of the neighborhood, and in the presence of five slaveholders, must, for the first offence, be punished with thirty-nine lashes, and for the second, with fifty lashes; which punishment may be inflicted by any officer of a patrol company, or by the order of any justice of the peace. Preaching without license.

§ 1023. Runaway slaves may be apprehended by any person, and carried before any justice of the peace, who must either commit them to the county jail, or send them to the owner, if known; who must, for every slave so apprehended, pay the person apprehending him six dollars, and all reasonable charges. Runaways to be taken up. Pay for taking up.

§ 1024. Any justice of the peace receiving information that three or more runaway slaves are lurking and hid in swamps, or other obscure places, may, by warrant, reciting Gangs of runaways; how taken.

the names of the slaves, and their owners, if known, direct a leader of the patrol of the district, and if there be none, then any other suitable person, to summon, and take with him such power as may be necessary to apprehend such runaway; and if taken, to deliver them to the owner or commit them to the jail of his proper county.

Fees.

§ 1025. For such apprehension and delivery to the owner, or committal to jail, the parties so apprehending shall be entitled to twenty dollars for each slave, to be paid by the owner.

Name of owner and slave to be stated in the commitment.

§ 1026. The justice committing a runaway, must endeavor to ascertain from the slave, and from all other sources within his reach, the true name of the slave, and his owner's name, and residence; and must include all such information in the commitment, which must be preserved and filed by the justice.

Advertisement of slave committed.

§ 1027. On the reception of a runaway slave, the sheriff must, without delay, cause advertisement to be made in a newspaper, published in the county, if there be one, if not, in the one published nearest to the court house of such county, giving an accurate description of the person of the slave, his supposed age, the information contained in the warrant in relation to the slave, and his owner, and such other facts important to the identification of the slave, as the sheriff may be able to obtain from the slave, or from any other source, which must be continued for six months, once a week, if the slave is not sooner reclaimed by the owner.

When sold.

§ 1028. If the slave is not reclaimed within six months, the sheriff must advertise and sell him for cash, in the manner slaves are sold under execution. The proceeds of the sale, after all expenses are paid, must be paid to the county treasurer for the use of the county.

Owner may prove property and take him from jail.

§ 1029. The owner may regain the possession of the slave before sale, or the proceeds after sale, by appearing before the judge of probate of the county, and proving, by an impartial witness, his title to the slave; which proof must be reduced to writing, sworn to, subscribed, and filed in the office of the probate judge.

Purchase money paid over when slave has been sold.

§ 1030. Thereupon, and upon the payment by the owner of the costs of advertising, and all other expenses attending the imprisonment, the judge of probate must, by order in writing, direct the jailor, if the slave has not been sold, to deliver him to the applicant. If he has been sold, then the order must be directed to the county treasurer, to pay him over the proceeds of such sale received in the treasury.

Irregularity of sale.

§ 1031. The title of the purchaser of such slave is not affected by the claim of the owner, or by an irregularity in the advertisement or sale.

Fees of officers.

§ 1032. The fee of probate judge is two dollars, and the sheriff is allowed the same commissions as on sales under execution.

ARTICLE II.

Free negroes.

SEC.
1033. } Not allowed to enter state.
1034. } Warned to leave, &c.
1035. Penalty for being at unlawful assembly of slaves.
1036. }
1037. } Not to retail liquors, &c., nor
1038. } write passes for slaves, &c.
1039. Felony to aid slave's escape by forging pass.

SEC.
1040. Must leave the state on discharge from penitentiary.
1041. }
1042 } Trading with slave; visiting
1043. } slave; receiving slave; &c.
1044. Preaching to slaves without license, &c.

§ 1033. Every free colored person who has come to this state since the first day of February, one thousand eight hundred and thirty-two, and has been admonished by any sheriff, justice of the peace, or other judicial officer, that he cannot, by law, remain in this state; and does not, within thirty days, depart therefrom, must, on conviction, be punished by imprisonment in the penitentiary for two years; and shall have thirty days after his discharge from the penitentiary to leave the state; and on failing to do so, must be imprisoned in the penitentiary for five years. Not to come to the state.

§ 1034. All sheriffs, justices of the peace, and other judicial officers, knowing of any free person of color being within the state, contrary to the provisions of the preceding section, are hereby required to give the warning therein prescribed. How warned to leave.

§ 1035. If any free person of color is at any time found at an unlawful assembly of slaves, he forfeits twenty dollars, to any person who will sue for the same, before any justice of the peace; and for the second offence, must, in addition thereto, be punished with ten stripes. All justices of the peace, sheriffs, and constables, are charged with the execution of this law. Present at unlawful assembly of slaves. Penalty.

§ 1036. No free person of color must retail, or assist in retailing, or vending, spirituous or vinous liquors; and for every such offence, forfeits twenty dollars, to be recovered before any justice of the peace, by any one who will sue for the same; and for the second offence, having been once convicted and fined, must be punished by stripes, not exceeding twenty-five, at the discretion of the justice. Not to retail liquors.

§ 1037. The preceding sections of this article do not apply to, or affect any free person of color, who, by the treaty between the United States and Spain, became a citizen of the United States, or the descendants of such. Exception.

§ 1038. Any free person of color who writes for, or furnishes a slave with a pass, is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars, and be imprisoned not less than six months. Furnishing slave with a pass.

§ 1039. Any free person of color who writes for, or furnishes any slave a pass, with the intent to enable such slave Aiding slave to escape.

Felony.

to escape from his master, is guilty of a felony, and, on conviction, must be imprisoned in the penitentiary not less than three, nor more than seven years.

On discharge from the penitentiary must leave the state.

§ 1040. Any free person of color imprisoned in the penitentiary, must leave the state in one month after his discharge, unless pardoned; and failing to do so, or having left returns again, on conviction, must be imprisoned in the penitentiary five years.

Trading with slave.

§ 1041. Any free person of color, who buys of, or sells to, any slave, any article, or commodity whatever, without a written permission from the master, or overseer of such slave, designating the article so to be bought, or sold, is guilty of a misdemeanor, and must, upon conviction, before any justice of the peace of the county where such offence is committed, be punished with thirty-nine stripes.

Visiting slaves.

§ 1042. Any free person of color, found in company with any slave, in any kitchen, out house, or negro quarter, without a written permission from the owner, or overseer of such slave, must, for every such offence, receive fifteen lashes; and for every subsequent offence, thirty-nine lashes; which may be inflicted by the owner or overseer of the slave, or by any officer or member of any patrol company.

Receiving visits.

§ 1043. If any free person of color permits a slave to be, or remain in his house, or out house, or about his premises, without permission, in writing, from the owner, or overseer of the slave, he shall be punished as provided in the preceding section.

Preaching to slaves without license.

§ 1044. Any free person of color, who preaches, exhorts, or harangues any assembly of slaves, or of slaves and free persons of color, unless in the presence of five slaveholders, and licensed to preach or exhort by some religious society of the neighborhood, must, for the first offence, receive thirty-nine lashes, and for the second offence, fifty lashes, by the order of any justice of the county, before whom the offender may be carried.

Penalty.

ARTICLE III.

Free colored mariners.

Sec.		Sec.	
1045, 1046	Captain to give list of free negroes on board vessel; bond, &c.	1050, 1051	If captain does not take them, discharged; penalty for remaining.
1047.	When sick, taken to hospital.	1052, 1053, 1054	Fees of officers.
1048.	If bond not given, negro sailors sent to jail.		
1049.	Captain to pay charges and take them away.		

§ 1045. The master or consignee of any vessel, coming into any port in this state, having on board any free person of color, as cook, steward, or mariner, must, within three days

thereafter, furnish the mayor, or intendant of the place, a list of the free persons of color on board such vessel, and enter into bond, payable to the state of Alabama, in such sum, not less than two thousand dollars, and with such surety as the mayor or intendant may prescribe, which must be filed in his office; and upon a breach thereof, judgment may be rendered by motion of the solicitor of the circuit, in the circuit court of the county, or in the city court of Mobile, ten days' notice thereof being given, for the penalty of such bond. Captain to give list of free colored persons on board, and bond.

§ 1046. The condition of the bond is, that such free colored persons shall remain on board the vessel, and not leave the same during the stay of the vessel in the waters of this state; and upon its departure, that such free colored persons will depart with the vessel. That such vessel, with such persons on board, shall not come within three miles of the town or city attached to the port, nor within one mile of the shore, except in passing out of the bay of Mobile; and that during the stay of such vessel, no communication will be permitted between the free colored persons on board the vessel and slaves, or free persons of color within the state. Condition of the bond.

§ 1047. If any such free persons of color are dangerously ill, they may be conveyed to any hospital of the United States; or if there be none, to a private hospital; and as soon as discharged therefrom, must return to the vessel. In case of their sickness.

§ 1048. If within three days after the arrival of a vessel within the waters of this state, the list of such free colored persons, and the bond required by this article is not made, and delivered as herein provided for, the sheriff of the county must apprehend all such free persons of color, and lodge them in jail, where they must be kept until the vessel is ready to proceed to sea; and it is the duty of the harbor master to give information to the sheriff of the arrival of any vessel containing such free persons of color. When to be committed to jail.

§ 1049. It is the duty of the master of such vessel, when ready for sea, to take such free persons of color with him, and carry them beyond the limits of this state, paying the expenses of their arrest and detention; and upon failure to do so, he is guilty of a misdemeanor, and must be fined in a sum not exceeding one thousand dollars, and may, in the discretion of the jury, be imprisoned, not exceeding six months. Captain to pay expenses and take them away.

§ 1050. If such free persons of color are not carried away by the master of the vessel bringing them into this state, they must, after the departure of the vessel, be discharged from jail, aud warned to leave the state; the expenses of their arrest and detention to be paid by the county. If not carried away to be discharged.

§ 1051. If they do not depart within ten days after being discharged, or if, having left, they return to the state, they must, on conviction, be punished by confinement in the penitentiary not less than two, nor more than five years. Remaining after discharged.

§ 1052. Fees to the sheriff, three dollars for each free colored person apprehended. Fees of officers.

§ 1053. To the mayor one dollar, for taking and filing of bond, and list of sailors.

§ 1054. To the jailor same fees as allowed by law for sustenance of prisoners.

CHAPTER V.

RETAILERS.*

Sec.		Sec.	
1055.	No free negroes to be licensed to keep tavern, &c.	1060.	No recovery for liquor, without production of license, &c.
1056. 1057.	Certificate of character, before licensed; oath of party.	1061.	Justices to apprehend and bind over offenders, &c.
1058. 1059.	Who are retailers; general indictment sufficient.		

Free negroes not to be licensed.

§ 1055. No free negro must be licensed to keep a tavern, or to sell vinous or spirituous liquor.

Certificate of character.

§ 1056. No license must be granted to sell vinous, or spirituous liquor, unless the applicant produce to the judge of probate of his county, the recommendation of six respectable freeholders or householders thereof, residing within five miles of such applicant, stating that they are acquainted with him, that he is possessed of a good moral character, and in all respects a proper person to be licensed.

Oath.

§ 1057. The applicant must also, before obtaining his license, take and subscribe the following affidavit: "I do solemnly swear, that I will not sell any vinous or spirituous liquor to, or sell to, or purchase from, any slave, any article, or commodity, without the permission of the owner, master, or overseer, of such slave; and that I will not knowingly suffer the same to be done by my partner, clerk, agent, or any other person, upon, or about my premises, if in my power to prevent the same; and further, that I will not allow any gaming of any kind to be carried on, on or about my premises, if in my power to prevent the same;" which affidavit must be filed in the office of the judge of probate.

"Retailer" defined.

§ 1058. Any person selling vinous, or spirituous liquor, in quantities less than one quart, or by the quart to any person of known intemperate habits, or in any quantity, if the same is drank on, or about the premises, are retailers within the meaning of this code.

General indictment good.

§ 1059. In all indictments for retailing without a license, it is sufficient to charge, that the defendant sold vinous, or spirituous liquor, without a license, and contrary to law; and on the trial, any act of retailing, in violation of the law, may be proved.

License to be produced to

§ 1060. No person must obtain a judgment in any court of this state, upon any account, any item of which is for

---

* Various penalties against retailers will be found under Article 6, Chapter 2, Part iv.

vinous or spirituous liquor in less quantities than one quart, without producing to the court a license, showing his authority to retail, at the date af such item. recover judgment for liquor retailed.

§ 1061. All justices, whenever they have good reasons to believe, or whenever informed on oath, that any person has violated any of the provisions of this chapter, must forthwith issue a warrant against such person, and bind him over to answer therefor, to the next term of the circuit court. Offenders to be bound over.

CHAPTER VI.

ESTRAYS, AND ANIMALS RUNNING AT LARGE.

ARTICLE 1. Estrays.
" 2. Stallions and jackasses running at large.

ARTICLE I.

SEC.
1062. } Estrays may be taken up; neat
1063. } cattle only at certain times.
1064. Oath to be made before justice, &c.
1065. } How appraised; certificate en-
1066. } tered by judge of probate.
1067. When two or more taken at same time, &c.
1068. } Bond, when given; when re-
1069. } turned, &c.
1070. Horses appraised at over twenty dollars; fee for advertising, how paid.
1071. Justice to return certificate and pay over printing fee; penalty.
1072. } Judge of probate to advertise
1073. } in newspaper; exception.
1074. What advertisement to contain, &c.
1075. List of estrays, when and where posted.
SEC.
1076. Those advertised to be brought to court.
1077. } If estray die or escape, pro-
1078. } ceedings; taken up when discharged.
1079. Claims of owner, how established.
1080. Order of delivery on payment of expenses.
1081. } Estray not to be used until bond
1082. } is given; penalty.
1083. } No charge for keeping if used;
1084. } pay, how determined.
1085. } Not to be injured, &c.; penalty,
1086. } &c.
1087. If owner fail to claim, taker up has the title.
1088. } One half the value paid to
1089. } county; execution if not paid.
1090. } In case of death of taker up;
1091. } fees of justice and judge.

§ 1062. Every person in this state finding any horse, mare, mule, jack, or jenny, any neat cattle, hog, or sheep, running at large about his residence, or plantation, or the residence, or plantation of which he has charge, the owner of which is not known, may take up such animal as an estray. Estrays to be taken up.

§ 1063. No neat cattle, except cows with young calves, sheep, or hogs, must be taken up as estrays, between the first day of April, and November. Neat cattle not to be taken up at certain seasons.

§ 1064. Every person taking up an estray, must, within three days thereafter, make oath before some justice of the county in which such estray was found, that the same was taken up about his plantation, or residence, or about the plantation or residence in his charge, and that the marks or brands have not been defaced or altered since taking up. Oath of taker up.

Appraisement and certificate.

§ 1065. Such justice must thereupon issue his summons to two disinterested householders, directing them, after being sworn to appraise the estray at a fair valuation, to certify such valuation in writing, with a particular description of the estray, by the kind, size, mark, color, stature, and age; which certificate, signed by them, and attested by the justice, must be returned to the judge of probate, within three days thereafter.

To be entered in estray book.

§ 1066. The judge of probate must enter such certificate, and the name of the person taking up the estray, in a book to be kept for that purpose.

If two estrays taken at same time.

§ 1067. If two or more estrays of the same kind are taken up at the same time, by the same person, they must be included in the same summons, certificate of appraisement, and entry.

Bond to be given.

§ 1068. Every person taking up an estray, must, on the return of the certificate of appraisement to the justice, give bond with security, to be approved by him, in a sum equal to the appraised value of the estray, payable to the county, and conditioned, that if the owner thereof, in one year thereafter, prove his property in such estray, and pay all legal costs and expenses, he will deliver up the same; and if the owner fails to prove his property within a year, he will pay to the county one half of such appraised value.

Where filed.

§ 1069. The justice must return such bond to the judge of probate, with the appraisement and valuation of the estray.

Horses, &c., appraised at more than twenty dollars.

Advertising fee.

§ 1070. If the estray be a horse, mare, mule, jack, or jenny, and is appraised at more than twenty dollars, the person taking up such estray must pay to the justice two dollars, which must be paid to the judge of probate, on the return to him of the certificate of appraisement, for the expense of advertising, as hereinafter provided.

Neglect of duty by justice.

§ 1071. Any justice failing to return the certificate of appraisement, within the prescribed time, or to pay the printing fees, according to the provisions of the preceding section, forfeits one hundred dollars, one half to the person suing for the same, the other to the use of the county.

When advertised in newspaper.

§ 1072. When the estray is a horse, mare, mule, jack or jenny, and appraised at more than twenty dollars, the judge of probate must, on the return of the appraisement, and the payment of the sum hereinbefore provided for, advertise such estray in some newspaper of his county for three successive weeks; and if no newspaper is published therein, then in the paper nearest thereto.

Idem.

§ 1073. If the sum specified is not sufficient to procure the publication as required by the preceding section, such judge must cause the same to be advertised, by posting notice at three public places in the county, and pay the amount received by him, for the purpose of publication, into the county treasury.

§ 1074. The advertisement must contain the name of the

person by whom the estray was taken up, and the time when, the appraised value, description of the animal, and the name of the justice before whom the proceedings were had. Description in advertisement.

§ 1075. Such judge must also make out a list of all estrays and post up the same at the court house door, on the first day of each term of the circuit court; which list must show all estrays taken up within twelve months preceding such day, and not restored to their owners. List of estrays to be posted.

§ 1076. All estrays required by this chapter, to be advertised in a newspaper, must be brought or rode to the court house of the county in which they were taken up, on the first day of the circuit court next after such taking up. Estrays advertised to be brought to court house.

§ 1077. When the estray dies, or escapes without fault on the part of the taker up, and after the same is appraised, he must report the same to the judge of probate within ten days thereafter, making oath that such death, or escape, was without his fault; and such judge must make an entry thereof, in the margin where the certificate of appraisement is entered, and must not advertise, or include such estray in the list posted up at the court house door. Death or escape of estray.

§ 1078. Upon proceeding, as required by the preceding section, the taker up is on the escape, or death of the estray, discharged from all liability. How taken up; discharged.

§ 1079. If the owner of any estray, within one year from the execution of the bond given under section 1068, claim the same, he must notify the taker up, and establish his claim before a justice of the county, either by his own, or the oath of another person, satisfactorily to such justice. Ownership; how proved.

§ 1080. Such justice, if satisfied of the ownership of the estray, must make an order, in writing, requiring such estray to be delivered to such owner on his paying the legal costs which have accrued, and compensation for keeping. Order of delivery.

§ 1081. No person must work any estray, except by riding the same to the justice for the purpose of taking the oath required by section 1064, until he has given the bond required by this article. Estray not to be used until bond is given.

§ 1082. Any person using an estray, contrary to the provisions of the preceding section, forfeits one hundred dollars; one half to the use of the person suing for the same, the other to the use of the county. Penalty.

§ 1083. No person must make any charge for keeping an estray which has been used or worked, while in the possession of the taker up, except by riding the same to the court house for exhibition, and to the justice for the purpose of taking such oath; and any person violating this section, forfeits the appraised value of such estray, to the person suing for the same. No charge for keeping if worked.

§ 1084. For the keeping of estrays, if not worked, or used, the taker up is entitled to a reasonable compensation; if the parties cannot agree, to be determined by the justice before whom the owner proves the property; and if either party is dissatisfied with his decision, by any two disinterested house- Pay for keeping.

holders, who may be appointed by such justice, with liberty to call in an umpire, whose decision is final.

Not to be injured or killed.

§ 1085. No person taking up an estray, must intentionally injure, kill, or dispose of the same until after the expiration of the time, that the owner has the right of proving his property therein.

Penalty.

§ 1086. Any person violating the provisions of the preceding section, forfeits to the owner double the appraised value of the estray.

On failure to claim title forfeited to taker up.

§ 1087. If the owner of the estray does not appear and prove his property therein, in one year after the execution of the bond given under section 1068, he forfeits his right thereto, and the property is vested in the taker up of the same.

One half the value to be paid to the county.

§ 1088. If the estray is not proved in one year from the execution of such bond, the person taking up the same must pay to the judge of probate of the county in which such estray was taken up, one half of the appraised value of the same for the use of the county, in discharge of his bond.

If not paid execution issues on the bond.

§ 1089. After the expiration of such year, if the order of the justice requiring the taker up to return the estray to the owner, with his receipt thereon, is not filed with the judge of probate, or the one half of the appraised value of the estray paid to him, he must issue an execution on such bond in the name of the county against the obligors thereto, for one half of such appraised value and costs, returnable to any regular term of the court of probate, to be holden within three months.

Death of the taker up.

§ 1090. If the taker up die before the expiration of the time allowed by this article, to the owner of the estray to prove his property, the provisions in relation to giving up such estray to the owner apply to his legal representatives.

Fees to officers.

§ 1091. The justice is entitled, for administering the oath to the taker up, summoning householders to appraise the property, taking bond, and making return to the judge of probate, to one dollar, to be paid by the taker up; for proving property by the owner, and issuing order to restore the same, one dollar, to be paid by the owner; the judge of probate to fifty cents for each entry of any estray, to be paid by the taker up.

ARTICLE II.

Stallions and jackasses running at large.

Sec.		Sec.	
1092.	Taken up and carried before justice, &c.	1093.	If not claimed, may be gelded, &c.

§ 1092. If any stallion or jackass, over two years of age, is found running at large, such animal may be brought be-

fore any justice of the county, who must cause the same to be advertised, with a description of his marks, color, size, and age, with the name of the taker up, in three public places in the county; and the taker up is entitled to receive five dollars from the owner, and a reasonable compensation for keeping, to be determined as in the case of estrays, and the justice one dollar. Studs, &c., running at large.

§ 1093. If such stallion or jackass is not claimed within three months after being taken up, and the amounts specified in the preceding section paid within that time, the taker up, or any other person, may geld such animal at the risk of the owner. If not claimed.

CHAPTER VII.

MARKS AND BRANDS.

SEC.		SEC.	
1094.	Each man to have ear mark and brand for his cattle.	1097.	Indian or slave not to mark or brand; exception.
1095 } 1096 }	To be recorded, &c.; book of marks open to inspection.	1098.	Fees of judge of probate for recording mark, &c.

§ 1094. All persons in this state owning any cattle, hogs, sheep, or goats, running at large, must have an ear mark or brand, different from that of his neighbors. Ear marks and brands.

§ 1095. Such marks and brands must be recorded in the office of the judge of probate of the county in which such cattle, hogs, sheep, or goats run; but the same brand or mark must not be recorded to more than one person in the same county. Recorded.

§ 1096. When a dispute occurs as regards a brand, or mark, the person who has first recorded the same is entitled thereto; and the judge of probate must allow all citizens of the county to inspect, without charge, the book in which the marks or brands are recorded. Books open to inspection.

§ 1097. If any person allows or permits any slave, or Indian, to brand, or mark any animal, unless some white persons are present, such person forfeits to any person suing for the same twenty dollars. Indian or slave not to mark.

§ 1098. The judge of probate is entitled to twenty-five cents for each record of a mark or brand. Fee of judge of probate.

CHAPTER VIII.

ENCLOSURES, TRESPASSING, ANIMALS, AND PARTITION FENCES.

SEC.		SEC.	
1099.	Lawful enclosure defined.	1104	Damages, how assessed; partition fences.
1100.	No trespass by cattle, if enclosure not lawful, &c.	1105	
1101.	Penalty for setting pits, stakes, &c.	1106	Assessment of cost, how made, &c.; costs of justice, &c.
1102	Damages for trespass by cattle; remedy, &c.	1107	
1103		1108	Oath of viewers; "partition fences" defined.
		1109	

Lawful fences defined.

§ 1099. All enclosures and fences must be at least five feet high, and if made of rails, well staked and ridered, or otherwise sufficiently locked; and from the ground to the height of every three feet, the rails not more than four inches apart; or if made of palings, the palings not more than three inches apart; or if made with a ditch, such ditch must be four feet wide at the top; and the fence, of whatever material composed, at least five feet high from the bottom of the ditch, and three feet from the top of the bank, and so close as to prevent stock of any kind from getting through.

No trespass if fence not a lawful one.

§ 1100. If any trespass or damage is done by any animal breaking into lands not enclosed, as in the preceding section is provided, the owner is not liable therefor; and if any person injures or destroys any such animal, he is liable to the

Penalty for injuring cattle.

owner for five times the amount of the injury done, to be recovered before any court of competent jurisdiction.

Penalty for setting stakes, pits, &c.

§ 1101. If any person not having a fence as herein prescribed, sets in his enclosure any stakes, pits, poison, or any thing which may injure, or kill, any animal or stock, such person forfeits fifty dollars for every such act, to any person suing for the same; and any stakes, pits, or poison on any such lands, are presumptive evidence that the same were set by the person in charge of such land.

Damages for trespass by cattle.

§ 1102. If any stock trespass upon any lands enclosed as herein prescribed, the owner of such stock must pay the damages; and for each trespass after the first, double damages.

Remedy.

§ 1103. Upon complaint made before any justice of the election precinct, he must immediately issue an order in writing to three disinterested householders of the neighborhood, not related to either of the parties, reciting the complaint and directing them to examine the fence, ascertain its condition, and report the same in writing to the justice; and such report is evidence of the condition of the fence.

Idem.

§ 1104. The householders appointed under the preceding section, must also assess the damages, or double damages, as the case may be, and if the party pays such damages, or tenders them to the party injured, it is a bar to any action for such trespass.

Partition fences.

§ 1105. Partition fences between improved lands, are to be erected and repaired at the joint expense of the occupants;

or if any person makes a fence, a partition fence, by joining to or using it as such, he must pay to the person erecting it his proportion of the expense; taking into consideration the condition of such fence, at the time it is so joined to or used.

Assessment of value of partition fence.

§ 1106. If the parties cannot agree, on application, by either, to a justice of the election precinct in which such fence is, such justice must issue his order to three disinterested freeholders of such precinct, not related to either of the parties, to examine such fence and to ascertain the amount to be paid to the owner erecting the same; and such householders, on a day to be by them appointed, of which both parties must have notice, must examine such fence and report to the justice the proportionate amount to be paid to the person erecting the fence; and if such amount is not paid within ten days after such report, the justice must issue execution therefor, with costs, as provided in the following section, to be collected and returned as other executions.

Costs.

§ 1107. The justice is entitled to fifty cents for issuing the order, and the fence viewers to one dollar each; one half of which is to be paid by each party; and not being paid in ten days after the report, execution must issue therefor, with costs for issuing such execution.

Oath of the viewers.

§ 1108. The fence viewers, before proceeding to act, must take an oath, which may be administered by one to the other, to discharge their duties fairly and impartially.

Partition fences defined.

§ 1109. Partition fences, within the meaning of this chapter, are fences erected on the line, between lands owned by different persons.

CHAPTER IX.

MILLS AND MILLERS.

SEC.		SEC.	
1110.	Rotation in grinding, rate of toll, penalty, &c.	1112.	Public mills defined.
1111.			

Rotation in grinding.

§ 1110. The owners and keepers of public mills must grind the grain brought to their mills, in rotation, as it is received, and as well as the condition of the mill and water will permit; and may take, and receive for toll, one eighth of the grain, and no more; but nothing in this section is to be so construed as to prevent the owner of any mill from grinding his own grain at any time.

Tolls.

Penalty.

§ 1111. Any owner of a public mill, failing to observe the provisions of the preceding section, forfeits ten dollars to any person suing for the same.

Public mills.

§ 1112. All grist mills, which grind for toll, are public mills, within the meaning of this chapter.

CHAPTER X.

FIRE HUNTING.

SECS. 1113. 1114. } Penalty for fire hunting, damages for cattle killed, &c.

Fire hunting. Penalty.

§ 1113. Every person hunting deer by fire, and with a gun, in the night time, is liable to a penalty of fifty dollars; one half to the person suing for the same, the other to the use of the county.

If cattle are killed; damages.

§ 1114. If any person so hunting in the night time, kills any horse, mare, colt, or other domestic animal, he is liable to double damages, at the suit of the owner of the property, in addition to the penalty provided for in the preceding section.

CHAPTER XI.

UNWHOLESOME PROVISIONS.

SEC.
1115. Penalty for selling unwholesome provisions.

SEC.
1116. Name of baker to be baked on bread, penalty.
1117. Using another's name, penalty.

Sale of unwholesome provisions or adulterated liquors. Penalty.

§ 1115. Any butcher, baker, brewer, distiller, tavern keeper, retailer of wines or spirituous liquors, or other person, who sells, offers, or exposes to sale, or suffers or permits his servants, or other person for him, to sell or expose for sale any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, for the purpose of being sold or offered for sale; or any bread made from sour or unwholesome flour; or any drugged or manufactured wines, or adulterated spirituous liquors, shall, for every such offence, be guilty of a misdemeanor; and, in addition, forfeits ten dollars to any person who may sue for the same, before any justice of the peace.

Initials of baker baked on bread. Penalty.

§ 1116. No bread, crackers, or biscuit shall be sold, or exposed to sale, without having the initials of the christian name, and the surname of the baker legibly marked on every loaf, cracker, or biscuit offered or exposed to, or made for sale; and all bread, crackers, or biscuit so made, offered, or exposed to sale, is forfeited to the poor; and the person so making, offering, or exposing it to sale, forfeits ten dollars to the use of any person who may sue for the same, before any justice of the peace.

Using another's name. Penalty.

§ 1117. Any person counterfeiting the name of another, or marking any bread, crackers, or biscuit with any other name than his own, for every offence forfeits twenty dollars, to the

use of any person who may sue for the same, before any justice of the peace.

CHAPTER XII.

FOR THE PREVENTION OF INJURY BY THE STORAGE OF GUNPOWDER IN TOWNS.

SEC.
1118. What quantity allowed to each person in town, penalty, &c.
SEC.
1119. Magazines, by whom to be established.
1120. Magazine near city of Mobile.

§ 1118. No person shall keep on hand, at any one time, within the limits of any city or town corporate, either for sale or for his own use, more than fifty pounds of gunpowder, gun cotton, or any explosive material. Any person violating the provisions of this section, is guilty of a misdemeanor; and, on conviction, must be fined not less than one hundred dollars; and is, moreover, liable in damages to any person who may be injured, either in person or property, in consequence thereof. Unlawful storage of gunpowder. Penalty.

§ 1119. It is the duty of the corporate authorities of every city or town corporate within the state, to provide a suitable fire proof building without the limits of the town or city, for the storage of gunpowder or other explosive material, on such terms as the corporate authorities may prescribe. Magazine.

§ 1120. Within the limits of the city of Mobile, all gunpowder and other explosive material, except as provided in the first section of this chapter, must be kept on one of the islands of the Mobile river. Magazine in Mobile.

CHAPTER XIII.

FOR THE PRESERVATION OF OYSTERS IN THE STATE.

SEC.
1121. Penalty for taking oysters with certain implements.
1122. Sheriffs charged with enforcement of the law.
1123. Justice to try cause; finding unlawful implements on board, &c.
1124. Boat forfeited and offenders fined.
SEC.
1125. } Appeal from justice's court,
1126. } sale stayed on bond given.
1127. Sale, how made; proceeds, how disposed of.
1128. Proceedings in case of resistance, penalty.

§ 1121. It is not lawful to take or catch oysters, in any of the waters of this state, with or by a scoop, rake, drag, or dredge, or by the use of any other instrument than the oyster tongs heretofore in general use for taking oysters; and all Taking oysters with improper implements.

Penalty.

persons taking oysters in violation of the provisions of this chapter, forfeits ten dollars, to be recovered in the mode hereinafter prescribed; and also forfeits to the state the boat or vessel employed in such unlawful business, her tackle, apparel, and furniture.

Sheriffs must execute the law.

§ 1122. The sheriffs of the several counties bordering on the waters of this state, are specially charged with the execution of this law; and it is their duty, if they know, or are credibly informed of the violation of the provisions of the first section of this chapter, to take with them such power as may be necessary, and to seize the boat or vessel, her tackle, apparel and furniture, and arrest all persons on board the same so unlawfully engaged, and carry them before a justice of the peace of his county.

Jurisdiction of justice.

§ 1123. The justice must take jurisdiction of the complaint, and cause such witnesses to be subpœnaed as the accused or the sheriff may require. The sheriff is competent to testify, and the finding on board the boat or vessel a scoop, rake, or other instrument forbidden by the first section of this chapter, is presumptive evidence of guilt.

Boat forfeited.

§ 1124. If, upon the hearing, the offence is established, the justice must fine each of the offenders ten dollars; and if the fine is not paid, commit them to jail; and must also condemn the boat or vessel, her tackle, &c., forfeit to the state, and direct that it be sold, and adjudge the costs of the proceedings before him to be paid by the accused. If he is not satisfied from the proof that the accusation is established, he must discharge the accused, and release the boat.

Offenders fined.

Appeal from justices' court.

§ 1125. The proceeding before the justice must be carried on in the name of the state of Alabama, and the parties condemned, or either of them, may appeal from the sentence of condemnation and fine, at any time within ten days from the rendition thereof, to the circuit court of the county in which the proceeding is had; or if within the county of Mobile, to the city court of Mobile, where the cause must be tried de novo, and prosecuted by the solicitor of the circuit; and if the judgment is affirmed, costs must be adjudged on behalf of the state, and the solicitor be allowed a tax fee of ten dollars.

Bond and appeal stays sale.

§ 1126. The sale of the boat or vessel is not stayed by an appeal, unless the appellant enter into bond, in the penalty of twice the value of the boat or vessel, her tackle, &c., the value to be determined by the justice, with sufficient surety, payable to the state of Alabama, with condition to prosecute the appeal to effect. The bond must be returned, with the other papers in the cause, to the appellate court, and if the judgment of the justice is affirmed, judgment shall be rendered against all the obligors therein, for the amount of the fines not paid, and for the value of the boat, her tackle, &c., to be ascertained by proof, as well as the costs of the appellate court.

§ 1127. If the judgment is not stayed by the execution of

bond as aforesaid, the sheriff must, after the expiration of ten days, advertise and sell the boat or vessel, her tackle, &c., in the same manner as sales under execution; and after deducting all necessary expenses of the seizure, and costs of sale, of which he shall render an account upon oath, pay the residue to the county treasurer of the county in which the seizure is made, who may allow him ten per centum thereon, for his trouble. The money thus received by the treasurer, must be held for the same purposes as those arising from fines and forfeitures. Sale made and proceeds paid to the county.

§ 1128. If resistance be apprehended by the sheriff, in the execution of this law, he may summon to his aid the *posse comitatus* of his county, armed and equipped as the occasion may require; and may press into his service any steamboat, not actually engaged in carrying the public mail, or other vessel, at the risk and expense of the state; and if resistance is made by the boatmen of the boat or vessel attempted to be seized, such resistance is punishable in the same manner as is now provided by law for resistance to process. In case of resistance. Penalty.

CHAPTER XIV.

ROADS, BRIDGES, FERRIES, AND WATER-COURSES.

ARTICLE 1. Public roads.
" 2. Private roads.
" 3. Toll-bridges, causeways, and ferries.
" 4. Turnpike, plank, and M'Adamized roads, bridges, and water-courses on which toll is charged by any special law.
" 5. Water-courses.

ARTICLE I.

Public roads.

SEC.
1129. Court of county commissioners, have superintendence of, &c.
1130. } Grades of roads; changed only
1131. } by order of court, &c.
1132. Application for establishment or change of road.
1133. Proceedings to establish or change road.
1134. Viewers appointed; their oath, and return.
1135. } Order for opening; damages
1136. } allowed owner of lands, &c.
1137. } How assessed and paid.
1138. }
1139. } Who liable to road duty; ex-
1140. } ceptions.
1141. } Extent of liability; road pre-
1142. } cincts; apportioners; overseers.

SEC.
1143. } Their term of office; vacancies.
1144. }
1145. } Oath of apportioner; proceed-
1146. } ings when new road opened, &c.
1147. Sheriff to have copy of appointment of apportioners, &c.
1148 Statement to be attached by judge of probate, &c.
1149. What copy of appointment and statement embraces.
1150. On neglect by judge of probate; penalty.
1151. Service of copies on apportioners and overseers.
1152. Valid from time of actual service, &c.
1153. } Excuse or resignation; what
1154. } to state; trial of excuse, &c.
1155. }

SEC.
1156. } Duties of apportioners; to
1157. } apportion hands on nearest road.
1158. Penalty for failure to return list of hands, &c.
1159. Duties of overseers of roads.
1160. Apportionment valid till new one made.
1161. When none has been made.
1162. Overseer to contract for mile-posts and sign-boards.
1163. Contracts for timber: assessment of value of timber.
1164. Tools and implements, how procured.
1165. All hands in three miles to aid in opening new road.
1166. How hands are warned out.
1167. } Person giving warning exempt;
1168. } when warned on two roads.
1169. Penalty for failing to work when warned.
1170. May excuse defaulters; must return list of defaulters.
1171. List evidence of default.
1172. Penalty on overseer for not prosecuting defaulters.

SEC.
1173. No property exempt from execution
1174. Road book; what to contain.
1175. When streets of town out of order.
1176. Penalty for change or injury to road in sign-boards, &c.
1177. Gates on public road; when allowed, &c.
1178. Permitting brushwood or fallen trees in road; penalty, &c.
1179. Failure of overseer to keep road in order, &c.
1180. Racing or shooting guns, &c., on public road.
1181. Character of indictment of over seer or apportioner.
1182. Proof to support indictment, &c.
1183. General penalty for neglect of duty.
1184. Order establishing road, is evidence, &c.
1185. Pay of apportioner prosecuting overseer.
1186. Compensation of sheriff and judge of probate.

Superintendence of roads by court of county commissioners.

§ 1129. The court of county commissioners of the several counties in the state, are invested with a general superintendence of the public roads, within their respective counties; and may establish new, and change and discontinue old roads, in the manner hereinafter provided.

Grades of public roads.

§ 1130. Public roads are of three grades; the first, thirty feet wide, with bridges and causeways fifteen feet wide; the second, twenty feet wide, with bridges and causeways fifteen feet wide; and the third, fifteen feet wide, with bridges and causeways ten feet wide; all grades to be cleared of trees and other obstructions; the stumps to be cut within six inches of the ground; and lanes through plantations of such width as may be prescribed by the court, not exceeding thirty feet.

New road or change of road.

§ 1131. No public road can be established, changed, or discontinued, except on application to the court of county commissioners.

Petition.

§ 1132. Such application must be by petition; and at least thirty days' notice of the intended application must be given by advertisement at the court house door, and at three other public places in the county.

Proceedings.

§ 1133. When a new road is to be established, or an old road changed, the court must issue an order to seven disinterested householders of the county, to view and mark out the best route for such proposed road.

Viewers' oath.

§ 1134. The viewers, before acting, must take an oath to view and mark out the road described in the order, to the greatest advantage to the public and with as little prejudice to individuals as possible, and without partiality or favor; and must after viewing and marking out the route, return the same to the court.

Return.

Order for opening new road.

§ 1135. After the route is marked out, and the report of the viewers accepted, the court must make an order for the opening of such road; but no new road must be opened between the first day of March, and the tenth day of July, in any year, nor through any enclosure while a crop is growing therein, unless such crop is planted or sowed after the order is made.

Damages to owner of land.

§ 1136. When a new road is established, or an old road changed, any owner of the land over which it passes may, within six months after the opening of such new road, make application to the court of county commissioners for damages resulting to his land from its establishment; and the court must appoint the viewers, or a jury of seven disinterested householders, who must, before acting, be sworn truly to enquire and assess such damages, taking into consideration the advantages and disadvantages which will probably accrue from the road.

Assessment.

§ 1137. Such jury must examine the land, hear such proof as they deem necessary, assess the damages, and certify the same to the next court of county commissioners.

How paid.

§ 1138. The court, on the report of the jury, may either discontinue the road, or direct the same to be changed back to the old route, or may accept the assessment as made by the jury; in which case, the amount of the same is to be paid out of the county treasury.

Who liable to do road duty.

§ 1139. All persons are liable to work on public roads, except those exempted by the following section.

Persons exempt.

§ 1140. All females; all male slaves and persons of color under fifteen and over sixty years of age; all other males under eighteen and over forty-five years of age; licensed ministers; officers, teachers and students of colleges and schools; keepers of public grist mills; public ferrymen; keepers of toll bridges, turnpikes, causeways and plankroads; engineers and persons in charge of cars, or trains running on railroads; officers of the United States, this state or any county thereof; and all other persons excepted by any special law, are exempt from working on public roads.

Living more than six miles not liable to work.

§ 1141. No person, or hand, is liable to work any public road, every part of which is distant more than six miles from his residence; nor to work more than ten days in any one year, not counting the days engaged in opening new roads.

Road precincts apportioned, and overseers.

§ 1142. For the purpose of keeping roads in repair, the court of county commissioners must, at their first term in every second year, divide its county into a convenient number of road precincts, and must at the same court appoint three apportioners for each election precinct, and an overseer for each road precinct.

Term of office.

§ 1143. Apportioners and overseers hold their office for two years, and at the expiration of their term are entitled, if such term is served out, to a certificate of exemption from road service for the next two years.

Vacancy.

§ 1144. On failure of the court to act, or in case of a

vacancy, the judge of probate makes the appointment; and the person so appointed holds for the unexpired term.

Oath of apportioners.

§ 1145. Apportioners, before entering on their duties, must take an oath faithfully to discharge all their duties, to the best of their skill and judgment, without partiality or favor.

When new roads established.

§ 1146. When a new road is established, such road must be divided into precincts; overseers appointed for each precinct, who hold until the term fixed for the appointment of overseers for the county; and an order directed to such overseers issued by the judge of probate, directing the opening of the road through their precinct, which must be served by the sheriff and returned as is hereinafter provided for the service and return of copies of appointment on overseers.

Copy of the order of appointment to be furnished sheriff.

§ 1147. The judge of probate must, within ten days after the appointment of overseers and apportioners, furnish the sheriff with a copy of the order of appointment.

Statement to be attached.

§ 1148. The copy of the order appointing apportioners, must be accompanied with a statement, signed by the judge, of the overseers on any road precinct within their election precinct; a description of such road precinct, with the names and grades of the road assigned to such overseer.

What the order must show.

§ 1149. The copy of the order appointing overseers must contain a description of his precinct and grade of the road, and be accompanied by a statement of the names of the apportioners of the election precinct or precincts through which any part of the road assigned to him passes.

Neglect of duty by judge of probate.

§ 1150. Any judge of probate failing to discharge any of the duties assigned them by the four preceding sections, is guilty of a misdemeanor, and, on conviction, must be fined not less than twenty dollars.

Notice to the overseers and apportioners.

§ 1151. The sheriff must, within thirty days after the delivery to him of such copies and statements, deliver a copy of each to the apportioners and overseers if practicable, and if not, leave the same at their residence, and return the original with his endorsement of service to the judge of probate.

Valid from time of service.

§ 1152. A service of the copy of such appointments and statements, although not made within the time prescribed, is valid from the time of service.

Excuse or resignation.

§ 1153. Any person appointed apportioner or overseer, may send his excuse for not accepting, or after he has accepted may resign his appointment to the judge of probate.

What the excuse must show.

§ 1154. Such excuse or resignation must be in writing, the causes for not accepting or the reasons for resigning stated, and must be sworn to.

Trial of the excuse or resignation.

§ 1155. The judge of probate must deliver such excuse or resignation to the clerk of the circuit court, who must file the same; and at the next term enter it on the state docket; and if the excuse or reasons stated are regarded by the court as insufficient, such person must be fined by the court not exceeding one hundred dollars; having, however, the right to demand a jury to pass upon the sufficiency of such excuse or reasons.

§ 1156. It is the duty of the apportioners: Duties of apportioners.

1. To make a list of all persons and hands within their precincts, subject to work on public roads, within fifteen days after being served with a copy of their appointment, and to correct such list from time to time, as may be necessary during their term.

2. Within twenty days after such service, to apportion such persons and hands among the overseers, any portion of whose road is within their precinct, impartially, according to the portion of such road within their precinct, the grade of the same and its importance to the public; and to change such apportionment from time to time as a due regard to the public interest may require.

3. To provide each overseer in their precinct, within five days after any apportionment, with a correct list of the persons and hands apportioned him.

4. To inspect, from time to time, the public roads within their precinct, notice the character of the repairs, and observe if such road is regularly posted, and direction boards put up, as required by law.

5. To appoint one of their number to attend court, and report to the grand jury any overseer who has, in any particular, failed to discharge his duty, upon any road or portion of road within his precinct.

6. To see that all defaulters are prosecuted for not working.

§ 1157. The apportioners must apportion all persons and hands to work on the road nearest them, if it can be done with a due regard to the public interest. Hands to be apportioned on nearest road.

§ 1158. Every person failing to deliver to the apportioners of his precinct, or some one of them, within five days after application, a list of all hands, including his own, liable to work on roads, forfeits, for each hand so liable, six dollars, to be recovered, in the name of the county, before any justice of the precinct; and the apportioners must, on such failure, cause suit to be brought, and when the forfeiture is collected, to be paid into the county treasury. List of hands to be delivered to apportioners. Penalty.

§ 1159. It is the duty of overseers of public roads: Duty of overseers.

1. On the apportioners failing to furnish a list of persons and hands, within the time prescribed, to apply for, and, if possible, obtain the same. To obtain a list of hands.

2. To call out the persons and hands subject to work on their road precinct, at their discretion, and to work with the same ten days in the year, if such number of days' work is necessary to keep their precinct in good repair. Warn hands to work.

3. To measure, within three months after being notified of their appointment, their respective precincts in continuation; and to set up, at the end of each mile, neat and permanent mile posts, marked with the number of miles to the court house, or other noted place to which the road leads. Mile posts.

4. Where the road in their precinct forks or turns out, or crosses another public road, to erect within the same index boards, with proper directions, pointing towards the place to which such turn out, fork, or cross road leads. Sign boards.

Bridges and causeways.

5. To build bridges and causeways whenever the same are necessary, unless the court of county commissioners deem it expedient to have the same built by contract.

6. Where a space is left on the continuation of the same road, between two precincts in the same county, or on the county line in different counties, to unite with the overseer on the other side of such space, and his hands, either in working such intermediate space, or in building the bridges and causeways necessary to bring the two precincts together.

Report neglect of duty by apportioner.

7. To report to the grand jury any apportioner in any election precinct in which his road, or any portion of the same, is situated, who fails to discharge any of his duties.

8. To prosecute all defaulters for not working on roads, as is hereinafter provided.

9. To perform such other duties as are or may be required of them by law.

Apportionment valid till new one made.

§ 1160. In case no regular apportionment of hands is made, the overseer must act under the last apportionment; and in such case, all persons and hands living within two miles of any portion of the precinct, and not apportioned elsewhere, are liable to work, on being warned by the overseer, as hereinafter provided.

When none has been made.

§ 1161. If no apportionment whatever has been made, or the overseer cannot, on diligent enquiry, ascertain the same, all persons and hands living less than three miles from any portion of his precinct, and not apportioned elsewhere, are liable to work on being warned as hereinafter provided.

Contract for mile posts and sign boards.

§ 1162. The overseers may make contracts for making and painting mile posts and direction boards, the account for which, being verified by affidavit and certified by the overseer, must be paid out of the county treasury.

Contracts for timber.

§ 1163. The overseers may also make contracts with the owners of land for timber to build bridges and causeways, and if they cannot agree, each must appoint a disinterested person; and in case of refusal so to do by such owner, the overseer must appoint two persons, who, after being sworn to act impartially, must value such timber, and if they cannot agree, must call in an umpire, whose decision is final; and the valuation so made, and reduced to writing, on the production of the same, with the certificate of the overseer, must be allowed by the court of county commissioners, and paid out of the county treasury, unless the charges are excessive, in which case such court may allow the reasonable value.

Value of timber; how assessed.

Tools; how obtained.

§ 1164. If any other instruments than ordinary farming tools are necessary to keep the road in repair, the overseer may receive them in exchange for the labor of hands, or he may apply to the court of county commissioners, which court may authorize him to contract for such, and to such an amount as in its discretion it thinks proper, and pay for the same out of the county treasury.

Who to aid in opening new road.

§ 1165. On the opening of new roads, all persons and hands not exempt by the provisions of section 1140, living

within three miles thereof, are liable to work thereon; and the overseers opening such roads must warn all such persons and hands within that distance, and must proceed against any of them failing to attend and work, as against other defaulters.

How hands warned out.

§ 1166. The mode of warning hands, is for the overseer, or some person appointed by him, to give two days' notice, in person or in writing, to be left at the residence, to all free persons, and the owner or overseer of all slaves, liable to work, to meet at such time and place as the overseer of the road may appoint, and with such tools as he may direct.

Person giving warning exempt.

§ 1167. The person serving the notice may be excused from work, at the discretion of the overseer, for all or any number of days that the hands may work on such warning.

When warned on two roads.

§ 1168. If any person has been warned to work on two roads at the same time, he must work on the one on which he was first warned, if residing within six miles of any portion of such precinct, and not apportioned to any other.

Penalty for default.

§ 1169. If any person warned, as required by section 1166, fails to attend, or send a substitute with the proper tools, or fails faithfully to perform his duty; or if any owner or overseer of any slave liable to work, fails to send such slave agreeably to the notice, such person must pay for each day's default, and the owner or overseer for each day's default of each slave, not less than one or more than three dollars, to be recovered before any justice of the election precinct in which such road is, in the name of the county.

Overseer may excuse defaulters.

§ 1170. The overseer may excuse defaulters, on showing a good excuse on oath, which may be administered by the overseer, within five days after the default; and he must, at the expiration of that time, return on oath a list of defaulters who are not excused, to any justice of the precinct through which such road, or any portion of the same, passes, who may hear excuses at the trial.

Return list of defaulters.

List is evidence of default.

§ 1171. Such list is presumptive evidence of the default, against the person named therein, and should the county fail, the costs must be paid as in state cases.

Penalty for failure to prosecute defaulters.

§ 1172. If any overseer fails to prosecute all defaulters as herein required, any justice of the precinct in which such overseer's road or any portion of the same is, must, on application of an apportioner of such precinct, or any person liable to work thereon, issue a summons to such overseer, requiring him, on a day named therein, to show cause why such defaulters were not prosecuted; and if the overseer, on such summons being personally served, fails to show cause, the justice must give judgment against him for as much as the fines against the defaulters would have amounted to, at two dollars a day for each defaulter, not exceeding the amount of fifty dollars, to be paid when collected into the county treasury, by the officer collecting the same.

No property is exempt from execution.

§ 1173. No property owned by any defaulter in not working a public road, is exempt from execution issued on a judgment founded on such default.

Road book.

§ 1174. The judges of probate must keep a road book, containing a complete list of all the public roads in their counties; their names, grades, and the road precincts, so that an easy reference may at all times be had.

Streets of town out of order.

§ 1175. In all towns or cities incorporated under any law of this state, if the inhabitants are exempt from working on the public roads within the limits thereof, and any of the streets therein are out of repair for more than ten days at any one time, without a reasonable excuse therefor, to be determined by the court; the corporate officers of such town, or any one or more of them, are guilty of a misdemeanor.

Penalties for changing, injuring or obstructing public road.

§ 1176. To change a public road, except by order of the court of county commissioners, founded on a report of viewers appointed by the court, unless it straitens the same through enclosures, or renders it more convenient for the public; to obstruct a public road by a fence, bar, or other impediment, except by leave of the court of county commissioners, as provided for in the following section; to cut or place a tree, brush, or other obstacle across or along a public road, so as to impede travelling, and not remove the same within six hours; willfully to deface, injure, or destroy any mile post, index board, bridge, or causeway; or willfully to injure or obstruct any public road, in any way, are misdemeanors.

Gates on the road; when allowed.

§ 1177. The court of county commissioners may permit any person owning lands on any navigable stream, or stream declared by law to be a public highway, over which a public road passes, to erect one or more gates on such road, under such conditions, limitations and restrictions as such court may deem necessary to impose.

Penalty on overseer for permitting obstructions to remain on public roads.

§ 1178. Any overseer permitting a fallen tree, dead animal, or such quantity of brushwood as obstructs travel, to remain in or across a public road for three days after notice thereof, without a good excuse, to be determined by the court, is guilty of a misdemeanor; and all hands warned by such overseer, for the purpose of removing such tree or brushwood, are bound to attend, notwithstanding they may have worked ten days, and failing so to do, must be proceeded against by such overseer as other defaulters.

Failure to open new road.

§ 1179. If any overseer fails to open any new road which he has been appointed to open, or allows his precinct, or any part of the same, to be out of repair more than ten days at any one time, without a good excuse, to be determined by the court, he is guilty of a misdemeanor.

Racing or shooting on public road.

§ 1180. It is a misdemeanor for any person to engage in any horse race, or to shoot along or across any public road.

Character of indictment of officers.

§ 1181. In any indictment against an apportioner or overseer, it is sufficient to charge, in general terms, that the defendant has failed to discharge his duties as such apportioner or overseer, and the acts or omissions constituting his neglect of duty may be proved on the trial, as well as the excuse therefor, in such cases as excuses are allowed.

Proof by the state.

§ 1182. On the trial of any person for neglect of duty as overseer, the return of his appointment by the sheriff, or proof of such service in case of its loss, and the acts or admissions of such person to that effect, are evidence of his being overseer; that the road is a public road, may be proven by his acts and admissions, and by the use of it as such; and no proof is required on the part of the state, except that such person was overseer of the road at the time of the default; that such road was a public road, and proof of the default.

Penalty for neglect of duties imposed by this article.

§ 1183. Any apportioner or other officer on whom any duty is imposed by this article, who neglects to perform the same, in case no other provision has been made for the punishment of such neglect, is guilty of a misdemeanor.

Order establishing road is evidence.

§ 1184. Any order of the court of county commissioners, by which a road is recognized as a public road, is presumptive evidence thereof.

Compensation of apportioner presenting overseer.

§ 1185. Any apportioner appointed to attend court to prosecute an overseer, and attending for such purpose, is entitled to four cents a mile and two dollars a day, to be taxed in the bill of costs, if the defendant is convicted; or on failure to find a bill, or to convict, or if the defendant prove insolvent, to be paid out of the county treasury, on the certificate of the clerk.

Pay of judge and sheriff.

§ 1186. The judge of probate and sheriff, on showing to the court of county commissioners that they have discharged the duties imposed by this article, are entitled annually to the sum of ninety dollars each, to be paid out of the county treasury.

ARTICLE II.

Private roads.

Secs. 1187–8. How established; payment to owner of land, &c,

Private roads; how established.

§ 1187. Private roads may be established by the court of county commissioners, on the application of any person; such roads not to exceed fifteen feet in width, and to be opened and kept in repair by the person on whose application they are established, without exemption from work on public roads.

Compensation of owner.

§ 1188. In establishing a private road, the same rules must be observed, and the same proceedings had, as in the case of public roads; but no road must be opened through any person's plantation, or enclosure, without his consent; and the applicant must pay the owner of the land over which such road passes, all damages resulting thereto from the establishment of such road, to be assessed as in the case of public roads.

ARTICLE III.

Toll bridges, causeways, and ferries.

SEC.
1189. Toll bridges, how established; special tax for.
1190. Bridges between two counties, how established.
1191. License for toll bridge or ferry, how obtained; bond, &c.
1192. Additional bond, when required.
1193. When land belongs to two applicants, court may select, &c.
1194. Damages of owner of land, how assessed, &c.
1195. When stream divides two counties.
1196. Ferries, &c., not established within two miles, &c.
1197. } Person injured may sue on bond;
1198. } delay at ferry, &c.
1199. Penalty for overcharge of toll.
1200. For taking toll without license; not keeping ferry, &c., in repair, &c.
1201. Penalty for passing around toll gate, or injury to bridge, &c.
1202. Water-courses may be forded without toll.
1203. Remedy when injured by imperfect bridge, &c.

How established.

§ 1189. The court of county commissioners of each county is invested with authority to establish toll bridges, causeways and ferries, within their respective jurisdictions, as hereinafter provided; and may levy a special tax to build such bridges and causeways, when, in the opinion of such court, the public good requires.

Bridges on the line between two counties built at joint expense.

§ 1190. Whenever a bridge or causeway is necessary on the line between two counties, and the work is too great to be done by the overseers, and not established as hereinafter provided for, the same must be built at the mutual expense of such counties, in proportion to the amount of taxable property in each.

License for ferries, &c.

§ 1191. The court of county commissioners may license any person to establish a ferry, bridge, or causeway, for a term not exceeding ten years, and fix the rates of toll and ferriage, without discriminating in favor of the inhabitants of their county; requiring the applicant to give bond and security, to be approved by the judge of probate, in not more than two thousand dollars, payable to the county, and conditioned, if a ferry, to keep safe and convenient boats, with a sufficient number of ferrymen, and to keep the banks on each side of the water course in good repair; if a toll bridge or causeway, that it shall be well built, of the width prescribed for the grade of the road it is on, and kept in good repair, so that it can be passed at all times with safety and convenience; which bonds must be filed in the office of the judge of probate of the county in which the license is granted.

Bond.

Additional bond.

§ 1192. Such judge must, when directed by the court of county commissioners, or whenever, in his opinion, the public good demands, require an additional bond to be given, and should the same not be given within ten days after such requisition, such failure must be reported to the next term of the court of commissioners, and the license revoked.

Who entitled to license.

§ 1193. On application for ferries, when the banks on each side belong to the same person, he is entitled to the prior

right of establishing a ferry; when the banks belong to different persons, the court may grant the license, at its election, to either of such owners making the application.

Compensation of the owner of the land.

§ 1194. The owner of any land appropriated for a public ferry, must make application to the first term of the court, after the license is granted, and such court must appoint seven disinterested householders to assess his damages; such householders must be sworn to act impartially, must view the land and assess the damages for its appropriation, and report the same to the judge of probate; which damages, if not paid within thirty days after notice by the owner of such ferry, the court, on application of the owner of the land, must revoke the license.

Ferries, &c., between two counties.

§ 1195. Toll bridges, ferries, and causeways, on the line between any two counties, may be established by the court of either county; and in such case, the bond is to be approved by, and filed in the office of the judge of probate of the county in which the license is granted.

Not to be in two miles of another. Exception.

§ 1196. No licensed toll bridge, or ferry, must be established on the same water-course, within two miles of any other, unless within that distance of some town or city containing not less than five hundred inhabitants.

Suit on bond.

§ 1197. Any person injured by a breach of any bond given under this article, may sue thereon in his own name, and recover damages to the extent of the injury; and such bonds are not void by a single recovery, but may be sued on, from time to time, until the whole penalty is exhausted.

Detention at ferry.

§ 1198. Any person unreasonably detained at a public ferry, toll bridge, or causeway, may, for each detention, recover of the owner ten dollars, before any justice of the county.

Excessive tolls. Penalty.

§ 1199. Any keeper of any public ferry, toll bridge, or causeway, who demands or receives from any person a higher rate of toll than is prescribed by the court of county commissioners, forfeits to such person twenty dollars, recoverable before any justice of the county, and is also guilty of a misdemeanor.

Taking toll without license.

§ 1200. If any person demands or receives toll for crossing any ferry, bridge, or causeway, without a license therefor from the proper authority, or after the revocation of his license; or having a license for a ferry, allows the banks on either side to be out of repair for more than five days at any one time; or to provide good and safe boats, of a size sufficient for the accommodation of the public, furnished with competent and sufficient ferrymen for the safe and speedy passage of all persons, vehicles, horses, and stock; or in case of a toll bridge or causeway, fails to keep the same in good repair, without a reasonable excuse for such failures, to be determined by the court, he is guilty of a misdemeanor, and, on conviction, must be fined not less than twenty dollars.

Neglect to keep ferry or bridge in order. Penalty.

§ 1201. If any person break or injure any gate to a toll bridge or causeway; or obstruct, injure, or destroy such

Injuring bridge or passing around toll gate. Penalty.

bridge or causeway; pass round or under the same, with intent to avoid the payment of toll; such person forfeits to the owner ten dollars for each of such acts, and is also liable to an action for damages.

Fords.

§ 1202. Any person may, however, ford any water-course at any public ferry, without being liable to toll.

Damages for injury by defect in bridge.

§ 1203. When a bridge or causeway has been erected by contract with the county commissioners, with a guaranty, by bond or otherwise, that it shall continue safe for the passage of travellers and other persons for a stipulated time, any person injured in person or property before the expiration of such period, by a defect in such bridge or causeway, may sue in their own name on the bond or other guaranty, and recover damages for the injury; and if no guaranty has been taken, or the period has expired, may sue and recover damages of the county.

Who liable.

ARTICLE IV.

Turnpike, plank and macadamised roads, bridges and water-courses, on which toll is charged by any special law.

SEC. 1204. Penalty on owners for permitting them to be out of order and repair, etc.

Corporations to keep its road or bridge in good order.

§ 1204. If any incorporation or person authorised by any law of the state to charge toll on any turnpike, plank, or macadamised road, water-course, or bridge, allows the same to be out of the repair, or order contemplated by its charter, or such law, for ten days at any one time, without a sufficient excuse, to be determined by the court, the president and directors of such corporation, or the person so authorised, are guilty of a misdemeanor; and, on the trial, proof that such road, bridge, or water-course, has been out of such order for ten days at any one time, and that such corporation or person, or any one on the part thereof, charged toll for such road, bridge, or water-course, and that such president and directors act as, or claim to act in that capacity, is presumptive evidence of the existence of such corporation; of a charter, or law, authorising toll to be charged; and that the persons so acting, or claiming to act, are the president and directors of such corporation.

Penalty for failure.

ARTICLE V.

Water-courses.

Sec.		Sec.	
1205.	What water-courses public highways.	1208.	Duties of overseer, &c., when precinct is established on.
1206.	Improvement of water-courses, by whom made.	1209, 1210	Obstructing navigable streams; diverting water-courses, &c.
1207.	May be divided into road precincts.		

Navigable streams.

§ 1205. All navigable waters in this state are public highways.

Obstructions; how removed.

§ 1206. The court of county commissioners are authorised to make contracts for opening or clearing out any navigable stream within their county, and for keeping the same free from obstructions.

May be divided into road precincts.

§ 1207. Such court may lay off such navigable stream, or any portion of the same in its county, as a road precinct, and appoint overseers thereto as in case of public roads.

Hands to work on it as road duty.

§ 1208. When any water-course is established as a road precinct, hands must be apportioned to, and the same cleared out, obstructions removed, and kept in good order by the overseer, under the same regulations and penalties as to apportioners, overseers, and hands, as are applicable by the provisions of this chapter to public roads.

Penalty for obstructing.

§ 1209. Any person obstructing any navigable water-course in this state, is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars.

For diverting.

§ 1210. Any person diverting any stream from its natural channel, is liable to any party aggrieved for the damages sustained.

CHAPTER XV.

PROVISION FOR THE POOR.

Sec.		Sec.	
1211.	Poor house, and overseers of poor.	1216, 1217	Duties of master to the apprentice; penalty.
1212.	What relatives liable for their support; proceedings against, &c.	1218.	Indentures revoked for good cause.
1213.	Certificate of judge of probate, evidence of maintenance, &c.	1219.	Captain of vessel bringing paupers to the state, to give bond to indemnify the state. Penalty for refusal.
1214.	On failure of prosecution, no costs taxed to county.		
1215.	Children of poor bound out apprentices.		

Poor house and overseers.

§ 1211. The court of county commissioners, in each county in the state, have authority to purchase lands for a poor house, and to make all necessary contracts in relation to the

same, the title thereto vesting in the county; and to appoint overseers of the poor as may be necessary.

Relatives liable to support poor.

§ 1212. The father, grand-father, mother, grand-mother, child, or grand-child of any poor person unable to maintain themselves, being of sufficient ability, must support such persons; and failing so to do, any county in the state having made provision for such persons may sue their father, grand-father, mother, grand-mother, child, or grand-child, of full age, or either of them, before any court having jurisdiction, and recover at the rate of eight dollars a month, for the time such county has made provision for such person; the court, or jury, trying the same, being satisfied from the evidence that the defendant was of sufficient ability to provide for their support.

How enforced.

Certificate of judge of probate evidence.

§ 1213. On the trial, the certificate of the judge of probate of the county, that the person was poor and unable to maintain himself, and that he was maintained for such a time at the expense of the county, is presumptive evidence of such facts.

Costs.

§ 1214. Should the county fail to recover, no costs are to be taxed against the plaintiff, except for witnesses attending on behalf of such plaintiff.

Children bound out apprentices.

§ 1215. The judge of probate of each county may bind out as apprentices the children of any person unable to provide for their support until the age of twenty-one years, if a male, and sixteen years, if a female.

Duties of the master.

§ 1216. The person to whom such apprentice is bound, must provide a sufficiency of good and wholesome provisions, furnish all necessary clothing, washing and lodging; treat with kindness and humanity, and instruct such apprentice in the trade, business, or occupation which he pursues; have him taught to read, write, and cypher as far as the rule of three; and at the expiration of his term of apprenticeship, furnish him with two complete new suits of clothing.

Penalty.

§ 1217. Any master violating any of the provisions of the preceding section, is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars.

Indentures; when cancelled.

§ 1218. The judge of probate may, at any time, for good cause, revoke any letters of apprenticeship, and bind out the apprentice to another.

Captain of vessel bringing paupers into the state to give bond.

§ 1219. Any person commanding any vessel which brings into this state any infant, lunatic, maimed, deaf, dumb, aged, or infirm person, who is likely to become chargeable to any county, may be brought before any judge of probate; and if such judge is satisfied that such person will probably be a charge to any county, he must require such master to enter into bond payable to the state, with sureties resident in the state, to be approved by such judge, in the sum of five hundred dollars for each of such persons so brought, conditioned to pay all such expenses as any county in the state may incur, in the support of such person; which bond must be filed and kept by such judge; and on its condition being broken,

may be sued on, and a recovery had in different actions to the amount of the penalty thereof, in the name of the state for the use of any county; and on failure to give such bond, the judge must commit such master to jail until he gives the same, or is otherwise discharged by law. Penalty for refusal.

Title 14.

OF MUNICIPAL AND RELIGIOUS CORPORATIONS, AND FOR THE PURPOSES OF EDUCATION.

CHAPTER 1. Incorporation of towns.
" 2. Of religious societies, and for the purposes of education.

CHAPTER I.

THE INCORPORATION OF TOWNS.

SEC.
1220. How inhabitants may incorporate a town, &c.
1221 } Election directed; who may vote
1222 } at election, &c.
1223 } Manner of casting vote; hour of
1224 } election, &c.
1225. If majority vote for incorporation, record to be made, and the town is then incorporated.
1226 } Corporate authorities; how chosen, &c.
1227 }
1228 } Notice of the election of officers;
1229 } who may vote.
1230 } Inspectors appointed and sworn;
1231 } Casting vote, &c.
1232 } Who eligible to office; term of
1233 } office, &c.
1234. Subsequent elections, how conducted, &c.
1235. Qualifications of officers how determined.
1236. In case of failure to hold election, officers hold over.
1237. Quorum of council officers, how removed.
1238. Increase in number of counsellors, how made.
1239. Powers of corporate authorities.
1240. Authority of the marshal.
SEC.
1241. Laws and ordinances published before going into effect.
1242 } Assessment of taxes, &c., to be
1243 } annually made.
1244. Assessment returned, and notice of meeting to correct errors.
1245. When errors corrected, assessment to be approved.
1246. Effect of assessment when so approved.
1247. Notice of sale of personal property.
1248. Of real estate published in newspaper.
1249. What advertisement must contain.
1250. Sales of real estate, when and where made.
1251. Certificate of purchase of real estate.
1252 } Redemption of real estate, &c.,
1253 } by infants, married women, &c.
1254. Inhabitants exempt from road duty and county patrol.
1255. Change in name, powers, or boundary of town, how made.
1256. Fee of judge of probate and sheriff.

§ 1220. Whenever the inhabitants of any town, not incorporated, consisting of not less than one hundred, or more than three thousand, wish to become incorporated, a petition must be filed by at least twenty of the free white male inhabitants of such town, in the office of the judge of probate of the county in which such town is situated, stating in such petition the boundaries of such town and the name to be given, if incorporated. Proceedings when inhabitants wish to be incorporated.

Election directed. § 1221. Such judge must direct an election to be held within thirty days after the filing of such petition, at a place in such town to be designated, and under the direction of three inspectors, to be appointed by him.

Who may vote. § 1222. All white male inhabitants who have resided in such town three months next preceding such election, and are over twenty-one years of age, can vote.

Manner of voting. § 1223. The voters in such election must write upon their tickets, "corporation," or "no corporation," and deposit the same in the ballot box.

Hour of voting. § 1224. The polls must not be opened before ten in the morning, and the inspectors, before receiving any ballots, must take an oath to conduct such election fairly.

If majority vote for incorporation, town incorporated. § 1225. If a majority of the votes are in favor of a corporation, the inspectors must, within five days thereafter, certify the same to such judge of probate, who must, within three days thereafter, make an entry of record that the inhabitants of such town are incorporated by such name, and with such boundaries as are designated in the petition; whereupon the inhabitants of such town are incorporated, and invested with the rights incident to corporations under this code; to purchase and hold of real property not exceeding twenty thousand dollars in value, such personal property as may be necessary for the use of such corporation, and to dispose of the same.

Corporate authorities. § 1226. The business of such corporation is managed by an intendant and five counsellors, to be elected as hereinafter prescribed, who are styled the corporate authorities of such town.

How chosen. § 1227. The sheriff of the county must, in ten days after notice given him by the judge of probate of the entry of record of such corporation, appoint three inspectors, and a place of voting in such corporation, and a day on which the election is to be held for such intendant and counsellors.

Notice of election. § 1228. The day fixed for holding such election must not be more than fifteen days from the time of notice given to the sheriff by the judge of probate, according to the provisions of the preceding section: and notice of the day and place must be given by advertisement posted up at two public places in such town, at least five days before the election.

Who may vote. § 1229. All free white males over twenty-one years of age, who have been inhabitants of such town for three months next preceding such election, are entitled to vote thereat.

Inspectors. § 1230. The inspectors, before receiving any votes, must take an oath to conduct the election fairly.

Tie vote. § 1231. In such election, if no choice is made, by reason of two or more persons having the same number of votes for the same office, the inspectors must decide between such persons by lot.

Term of office. § 1232. The intendant and counsellors, so elected, hold their offices for one year, and until their successors are elected and qualified.

Who eligible.

§ 1233. No person can hold the office of intendant in such corporation, who is not the owner in fee of real property within the limits thereof, to the value of one hundred dollars, and who has not resided therein one year, next preceding the election: and no person the office of counsellor, who is not the owner in fee of real property within such limits, of the value of fifty dollars, and who has not resided therein six months next preceding such election.

Subsequent elections.

§ 1234. All elections after the first are to be ordered, and inspectors and places of voting appointed, by the corporate authorities of such town; and at all such elections, the qualifications of the voters shall be the same as at the first election, except that no person must vote who has not paid the taxes assessed against him by the corporation; and ties in such elections must in all cases be determined by lot.

Qualifications of officers; how determined.

§ 1235. The qualifications of the intendant are determined by the counsellors, and of any counsellor, by the intendant and the other counsellors.

On failure to elect, officers hold over.

§ 1236. Should the election not take place on the day appointed, the corporation is not for that cause dissolved; but the intendant and counsellors remain in office until their successors are elected and qualified: and in such case the corporate authorities must appoint some other day, as early as may be, on which such election must be held.

Quorum of board.

§ 1237. A majority of the aggregate number of the intendant and counsellors constitute a quorum for the transaction of business; but a smaller number may make adjournments, and have power to compel the attendance of absent members, by imposing such fines on delinquents as will secure their attendance; and two-thirds of the whole number of such corporate authorities may remove any officer or member for malconduct or disorderly behavior.

Removal of officers.

Increase in the number of counsellors.

§ 1238. Whenever, in the opinion of the corporate authorities of such town, it is expedient to increase the number of counsellors to nine, they may direct nine to be elected at the next and every succeeding annual election; and may in the same manner reduce the number of counsellors again.

Powers of the corporate authorities.

§ 1239. The corporate authorities of such town have the following powers:

1. To pass such by-laws and ordinances as may be necessary to enforce the powers in this chapter granted, and for their own government, not contrary to the laws of this state, or the restrictions herein imposed.

2. To prevent and remove all nuisances, at the expense of the person causing the same, or upon whose property it may be found.

3. To license, tax, regulate, and restrain, theatrical and other shows and amusements, and the retailing spirituous and vinous liquors, within the corporation.

4. To restrain and prohibit gaming, houses of ill fame, disorderly conduct, and breaches of the peace.

5. To establish night and day watches and patrols, and to appoint captains of the same.

6. To prevent unlawful assemblages of slaves, and to keep them under proper control and subordination.

7. To regulate and establish markets, town prisons, sink and repair public wells, and make all needful provisions for furnishing the town with water; keep in repair all necessary streets, alleys, and drains, and to adopt regulations necessary for the same.

8. To license and regulate waggons, carts, drays, hacks, and carriages, running in such town for hire.

9. To appoint a marshal, treasurer, clerk, and all other necessary officers; prescribe their duties, and fix their compensation, and also that of the intendant.

10. To impose fines, not exceeding forty dollars, for breaches of their by-laws and ordinances; and to enforce and collect the same by execution against the property, or, in case of breach of the peace or disorderly conduct, by imprisonment for not more than two days.

11. To supply all vacancies in their own body; the persons so appointed to hold until the next election, and until their successors are elected and qualified.

12. To exercise such other powers as are herein conferred on them.

Authority of marshal.

§ 1240. The marshal has authority to execute the lawful ordinances of such corporate authorities, within their jurisdiction, and must, without warrant, arrest all offenders breaking the peace, or violating any ordinance of the town, and bring them before such corporate authorities.

Laws not enforced till published.

§ 1241. No by-law or ordinance must be enforced, until it has been published at least ten days in three public places in such town, and also in a newspaper, if any is published within the limits of such corporation.

Powers of taxation.

§ 1242. Such corporate authorities may annually assess not exceeding one per cent. on the value of all real estate in such town: a poll tax of not exceeding two dollars on each white male inhabitant over the age of twenty-one years, who has resided in such town three months next preceding the time when such tax is assessed: on every free negro residing in such town at the time of the assessment, not exceeding ten dollars: on all pleasure carriages kept for use, not exceeding one per cent. on their value: on every cart, dray, waggon, carriage, or other vehicle, used for the transportation of goods or persons for hire in any such town, not exceeding thirty dollars: on all slaves over ten, and not exceeding sixty years, one dollar: on every retailer of spirituous liquor, not less than twenty, or more than five hundred dollars: on every vender of goods, wares, and merchandise, drugs, or medicines, or either of them, not exceeding twenty-five dollars per annum: on all goods sold at auction, upon which under the laws of this state a tax is assessed, not exceeding one per cent.: upon all cards sold or disposed of, not more than one dollar a pack: and on all other property, not exceeding one half per cent. of its value.

Assessment annual.

§ 1243. The corporate authorities of such town, may cause an assessment of all property subject to taxation to be made annually; the assessment naming the owner of the property when known, and otherwise assessing it to owners unknown.

Meeting to correct errors in assessment.

§ 1244. The assessment must be returned to the intendant, who must cause ten days' notice to be given by advertisement in a newspaper, if any is published in such town, and if not, by an advertisement at a public place therein, at least ten days before the day when such corporate authorities will correct mistakes in such assessment; specifying the day and place where such mistakes will be corrected.

Errors to be corrected and assessment approved.

§ 1245. Such corporate authorities must attend at the day and place, and correct all mistakes in the assessment; and when corrected, mark upon the same "appproved," and deliver it to the person appointed to collect the taxes.

Assessment has the force of a judgment.

§ 1246. Such assessment, so approved, has the force and effect of a judgment and execution; and the person appointed to collect such taxes, may, on failure to pay, collect the same by levy and sale of the property of the person to whom assessed; or if assessed to an owner unknown, by a sale of the property.

Notice of sale of personal property.

§ 1247. On all sales of personal property under the preceding section, ten days' notice of the time and place of sale must be given by notice posted at a public place in such town.

Of real estate to be advertised in a newspaper.

§ 1248. On all sales of real property for the non-payment of taxes, thirty days' notice by advertisement must be given in some newspaper in such town, and if there is none, by posting such advertisement at some public place therein, for thirty days before the sale.

What the advertisement must state.

§ 1249. Such advertisement must state:

1. The description of property.

2. The name of the person to whom assessed, unless assessed to an unknown owner, in which case it must be so stated.

3. The amount of taxes assessed, and the costs, including the expences of the advertisement.

Sales; when made.

§ 1250. All sales of property under this chapter, must be made in such town, must commence between the hours of ten and twelve in the morning, and not continue past the hour of four in the afternoon; and may continue from day to day, until the sale is completed.

Certificate of purchase of real estate.

§ 1251. The person appointed to collect the taxes must give to the purchaser of real estate a certificate of purchase in the same form, and which is of the same effect, with the certificate given by the tax collector in sales of real property for taxes.

Redemption.

§ 1252. Any real estate sold under this chapter, may be redeemed at any time within two years from the sale, on the payment of the amount for which such property sold, with interest at the rate of twenty per cent. per annum, and all taxes which have accrued; and if the purchaser does not reside within the limits of the corporation, the same may be

redeemed by payment made into the corporation treasury for the benefit of the purchaser.

By infants and married women, &c.

§ 1253. Infants, lunatics and married women, are allowed one year after the removal of their respective disabilities, for the redemption of their real estate, sold under the provisions of this chapter, which may be done on the same terms as is prescribed in the preceding section, as to the amount to be paid, upon application to a court of chancery.

Inhabitants exempt from road and patrol duty.

§ 1254. All the inhabitants of such town are exempt from working on roads without the limits of the corporation, and from patrol duty except under the authority of such corporation; and all white males between the age of eighteen and forty-five years, except persons exempt from militia duty, and militia officers above the rank of ensign, are liable to do patrol duty.

Change of name and powers.

§ 1255. In like manner ten inhabitants of any corporate town may, by petition to the judge of probate, propose an alteration of the name, or boundary of the town, setting forth the proposed alteration, when the same proceedings shall be had as herein provided for the creation of a corporation; and if a majority of the qualified voters vote aye, the boundary, or name shall be changed conformably to said petition, on the registration thereof by the judge of probate.

Fee of judge and sheriff.

§ 1256. The judge of probate and sheriff, are each entitled to five dollars for services rendered under this chapter, to be paid by the corporation.

CHAPTER II.

OF RELIGIOUS SOCIETIES, AND FOR THE PURPOSES OF EDUCATION.

Sec.		Sec.	
1257.	Church or religious society to be incorporated, must elect trustees, &c.	1260.	Corporations for education, how created.
1258.	Trustees file certificate with judge of probate.	1261.	Certificates filed, to be recorded.
1259.	They are then incorporated.	1262.	Powers of such corporations.
		1263.	Suits against, how commenced,
		1264.	Fee of judge of probate.

Trustees elected.

§ 1257. The members of any church, or religious society, wishing to become incorporated, must elect trustees not less than three or more than nine.

Trustees to file a certificate.

§ 1258. Such trustees must, within thirty days after their election, file in the office of the judge of probate of the county a certificate, stating the corporate name selected, the names of the trustees, the length of time for which they were elected; which must be subscribed by them and recorded in the office of such judge of probate.

Then incorporated.

§ 1259. The members of such church, or society, their associates and successors, are, from the filing of such certificate, incorporated by the name specified therein.

Corporations for education; how formed.

§ 1260. Any number of persons not less than five, desirous of becoming incorporated for the purposes of education, may in like manner elect trustees, not less than three, or more than nine, and on filing a certificate subscribed by them in the office of the judge of probate of the county, within thirty days after the election of such trustees, stating the corporate name selected, the names of the trustees, the length of time for which they were elected; are incorporated by the name specified in such certificate.

Certificates recorded.

§ 1261. All certificates filed under the provisions of this chapter, must be recorded in the office of the judge of probate, and a copy thereof duly certified by such judge, stating the time when the same was filed, is evidence of the existence of such corporation from that time.

Powers of such corporations.

§ 1262. Corporations created under this chapter may hold real and personal property, not exceeeding in value fifty thousand dollars; may receive property by gift, will, or devise, holding the same in conformity with all lawful conditions imposed by the donor, and exercise such other powers as are incident to private corporations.

Suits against; how commenced.

§ 1263. In all suits, or legal proceedings, the service of a summons or notice on any trustee of a corporation created under this chapter, is valid for the purpose of bringing such corporation into court, or for the objects of the notice.

Fee of judge.

§ 1264. The judge of probate is entitled to a fee of two dollars for filing and recording all certificates under this chapter.

PART SECOND.

OF REAL AND PERSONAL PROPERTY; ITS ACQUISITION, ENJOYMENT, DISPOSITION, AND OTHER PRIVATE RIGHTS.

Title 1.

CONVEYANCES, LOANS, AND DOWER.

CHAP. 1. Of conveyances and loans.
" 2. Of dower.

CHAPTER I.

OF CONVEYANCES.

ARTICLE 1. Who may make conveyances for the alienation of lands.
" 2. Registration.
" 3. Probate and acknowledgment of conveyances.
" 4. Protection to creditors and purchasers against dormant conveyances.
" 5. Of the construction of conveyances, and certain general provisions relating thereto.
" 6. In relation to entering the satisfaction of mortgages.
" 7. Imperfect titles, how perfected.
" 8. Grants by the state and the United States.

ARTICLE I.

Who may make conveyances for the alienation of lands.

SEC. 1265. All persons not legally incapacitated may convey lands by deed or will.
SEC. 1266. Conveyances to be in writing, signed and attested.
SEC. 1267. Acknowledgment for probate, dispenses with witnesses.

All persons of full age may convey lands by deed or will.

§ 1265. All persons aged twenty-one years, and not under a legal incapacity, may alien their lands, and any interest therein, whether immediate or future, certain or contingent, by instrument in writing, or by their last will, under the regulations prescribed by law.

Conveyances of land must be in writing and subscribed by the grantor, attested by one witness.

§ 1266. Conveyances for the alienation of lands must be written or printed, on parchment or paper, and must be signed at their foot by the contracting party, or his agent having a written authority; or if he is not able to sign his name, then his name must be written for him, with the words

"his mark" written against the same or over it; the execution of such conveyance must be attested by one, or where the party cannot write, by two witnesses who are able to write, and must write their names as witnesses. Two witnesses required if grantor cannot wr.te.

§ 1267. The acknowledgment hereinafter provided for, operates as a compliance with the requisitions of the preceding section, upon the subject of witnesses. Acknowledgment dispenses with necessity of a witness.

ARTICLE II.

Registration.

SEC.
1268. Conveyances recorded in the judge of probate's office.
1269. Books kept for recording, mode of recording.
SEC.
1270. Delivery for record operates as a record, receipts to be given, &c.
1271. Access to the books permitted, and transcripts to be made, &c.
1272. Penalty for neglect by the judge.

§ 1268. Conveyances of property required by law to be recorded, must be recorded in the office of the judge of probate. Recorded in the office of the judge of probate.

§ 1269. Judges of such court are to procure, at the expense of their counties, large and well bound books, in which must be recorded, in a fair hand, word for word, conveyances of property, with the acknowledgments, proofs, schedules, plats, surveys, &c., belonging thereto; and at the foot, or in the margin of the record of each conveyance, the day of the month and year of the delivery of the same for record, must be specified. The judge making the record of any conveyance, must certify on the same when it was received and recorded; and in what book and page or pages the same is recorded; and must deliver it to the party entitled thereto, or his order, on the payment of the fees of registration. Books to be procured for recording conveyances. Conveyances; how recorded. Certificate of record to be endorsed on the conveyance. 10 Ala., 365; 11 Ala., 977; 12 Ala., 247.

§ 1270. The conveyance is operative as a record, from the day of the delivery to the judge, and any one delivering a conveyance for registration, may require a receipt for the same, describing it by the date, parties thereto, and property conveyed. Delivery to judge operates as a record of conveyance. Receipts given on delivery.

§ 1271. Such judge must permit all persons to have free access to such books, during office hours, and furnish transcripts therefrom, with certificates, when required, upon the payment of lawful fees. Access to records to be permitted and certified copies given.

§ 1272. If any judge of probate neglects or refuses to perform any of the duties required by this article, he is liable to a suit for damages to the party injured; and also to a penalty of two hundred dollars, which may be sued for by the county treasurer for the use of the county, or in his own name by the party aggrieved, for the joint use of himself and the county. Penalty for neglect of duty by judge of probate. How sued for and recovered.

ARTICLE III.

Probate and acknowledgment of conveyances.

SEC.
1273. Conveyances of land recorded in the county where it lies.
1274. The record of a conveyance is notice of its contents.
1275. On acknowledgment or proof and record, deed evidence without further proof; and if lost, &c., a certified copy is evidence.
1276. Who may receive acknowledgments and proofs.
1277. How taken in other states or foreign countries.
1278. Powers of attorney, how proved or acknowledged for record.
1279. Form of acknowledgment.
1280. Form of probate.
1281. Conveyances to be proved by two witnesses, or acknowledged, to make them evidence without proof.
1282. Conveyances by married women of certain property, void unless acknowledged or attested
1283. Mortgages of personal property, where recorded, &c.
1284. Incumbrances on personal property, brought to the state; when recorded.
1285. When tenant for life or years brings it, the conveyance must be recorded.
1286. Choses in action not considered personal property.

Real property, recorded where land lies.

§ 1273. Conveyances of real property must be recorded in the county in which such property is situate.

Record of conveyance operates as notice, without proof or acknowledgement.

§ 1274. The recording in the proper office of any conveyance of property which may be legally admitted to record, operates as a notice of the contents of such conveyance, without any acknowledgment or probate thereof.

If acknowledged or proved, and recorded, to be evidence; if lost, &c., copy to be received in evidence.

§ 1275. Conveyances of any property, whether absolute or on condition, which are acknowledged or proven according to law, and recorded within twelve months from their date, may be received in evidence in any court, without further proof. And if it appears to the court that the original conveyance has been lost or destroyed, or that the party offering the transcript has not the custody or control thereof, the court must receive a transcript, duly certified, in the place of such original.

Officers who may take acknowledgements and proof of conveyances.

§ 1276. Acknowledgments and proofs of conveyances may be taken by the following officers within this state; judges of the supreme and circuit courts, and their clerks, chancellors, judges of the courts of probate, justices of the peace, and notaries public.

How taken in other states and territories.

§ 1277. Acknowledgments and proofs of conveyances may be taken within the United States, and beyond the state of Alabama, by judges and clerks of any federal court, judges of any court of record in any state, notaries public, or commissioners appointed by the governor of this state; beyond

How taken in foreign countries.

the limits of the United States, such acknowledgment and proofs may be taken by the judge of any court of record, mayor or chief magistrate of any city, town, borough or county, notaries public, or by any diplomatic, consular or commercial agent of the United States.

Power of attorney; how proved or acknowledged.

§ 1278. Powers of attorney, or other instruments conferring authority to convey property, may be proven or ackowledged in the same manner, and must be received as evidence to the same extent as conveyances.

Form of acknowledgment of conveyance.

§ 1279. The following is the form of the acknowledgment to be used in this state, on conveyances of every description admitted to record:

The State of) I, (name and style of the officer,)
county.) hereby certify that —— ——, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date. Given under my hand, this —— day of ——, A. D. 185 .

A—— B——.

Form of probate of conveyance.

§ 1280. The form of a probate of a conveyance is as follows:

The State of) I, (name and style of the officer,)
county.) hereby certify that —— ——, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that —— ——, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that be attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence. Given under my hand, this —— day of ——, A. D. 185 .

Signed, A—— B——.

Conveyance to be proved by two witnesses, or acknowledged, in order to make copies evidence.

§ 1281. All conveyances admitted to record on proof, must be attested by two witnesses, and the proof or acknowledgment must comply substantially with the foregoing forms, or the conveyances lose the privileges conferred by section 1275.

Conveyances of married women, of certain property, void, unless acknowledged or attested by two witnesses.

§ 1282. Conveyances by married women of real property, or any interest therein, stocks in incorporated companies, shares in manufacturing associations, or slaves, are inoperative, unless attested by two witnesses, or acknowledged in the mode, and before the officer hereinbefore specified, for taking acknowledgment of conveyances.

Mortgages, &c., of personal property, where recorded.

§ 1283. Conveyances of personal property, to secure debts or to provide indemnity, must be recorded in the county in which the grantor resides, and also in the county where the property is, at the date of the conveyance; and if before the lien is satisfied, the property is removed to another county, the conveyance must be again recorded, within six months from such removal, in the county to which it is removed.

Personal property subject to liens or trusts in another state and removed to this, instrument must be recorded.

§ 1284. Whenever any personal property is subject to any lien, incumbrance, mortgage, or trust, for the security of debts, at the time of its removal to this state, the writing evidencing the lien, incumbrance, mortgage, or trust, must be recorded in the county into which it is brought, and remains, within four months of the arrival of such property.

When a tenant for life or years of personal property, brings it to this state,

§ 1285. Whenever any person having an estate for life, or years, in personal property, removes to this state with such property, the conveyance creating such estate, must be recorded in the county to which it is brought, within twelve

The conveyance must be recorded to affect creditors and purchasers.

months thereafter; and if such property is removed to another county, then in such county, within four months after its removal thereto; or such property must be taken to vest absolutely in such person, as to purchasers and creditors, without notice.

Choses in action not personal property.

§ 1286. Things in action, are not included in the words "personal property" in this article.

ARTICLE IV.

Protection to creditors and purchasers against dormant conveyances and loans.

SEC.
1287. Mortgages to secure debts created at the date, to be recorded within three months.
1288. Other mortgages, &c. to be a lien only from time of record.
1289. Defeasance of absolute conveyances to be recorded.
1290. Deeds and wills creating remainders, reversions, &c. to be recorded, to bar claims of creditors, &c. after five years.
1291. Conveyances of personal property to secure debts, when to be recorded
1292. Defeasances in such cases also to be recorded.
SEC.
1293. Record of marriage contracts, &c.
1294. Loans for three years and conveyances of terms of years of personal property, to be recorded.
1295. Loans of personal property, not in writing, if for more than three years, vest the property as to creditors, &c.
1296. Gifts to minors to be recorded when possession is with the parent.
1297. Parol gifts inoperative, until possession is given.

Mortgage to secure debts created at the date void as to certain persons if not recorded in three months.

§ 1287. Conveyances of unconditional estates, and mortgages, or instruments in the nature of a mortgage, of real property, to secure any debt created at the date thereof, are void, as to purchasers for a valuable consideration, mortgagees, and judgment creditors, having no notice thereof, unless recorded within three months from their date.

All other conveyances to secure debts, void, as to certain persons, if not recorded before a new lien accrues.

§ 1288. All other conveyances of real property, mortgages, or deeds of trust to secure any debts, other than those specified in the preceding section, are inoperative and void, as to purchasers for a valuable consideration, mortgagees and judgment creditors, without notice, unless the same have been recorded, before the accrual of the right of such purchasers, mortgagees or judgment creditors.

Defeasance if absolute conveyance, also to be recorded.

§ 1289. The two preceding sections include absolute conveyances of real property, defeasible by a defeasance, or other instrument, in which case such defeasance, or instrument, must be recorded according to its character, within the time limited in the two preceding sections, or it is void, as to purchasers for a valuable consideration, mortgagees, and judgment creditors, of the original grantee without notice.

Remainders, after an estate for life in real es-

§ 1290. All wills and conveyances creating estates in lands in remainder, or reversion, or upon a condition, after an estate for life or lives, are inoperative and void, as against the

creditors of the tenant for life or lives, in possession, after a possession of five years by such tenant, unless the will or conveyance be recorded, within five years from the entry, and possession of such tenant. tate, void as to certain persons if not recorded.

§ 1291. Conveyances of personal property to secure debts, or to provide indemnity, are inoperative against creditors, and purchasers without notice, until recorded, unless the property is brought into this state, subject to such incumbrances, in which case four months are allowed for the registration of the conveyance; and if such property is removed to a different county from that in which the grantor resides, the conveyance must be recorded in such county, within six months from the removal, or it ceases to have effect after such six months, against the creditors or purchasers of the grantor, without notice. Conveyance of personal property to secure debts, &c., inoperative as to certain persons until recorded. Time for recording when property is brought to the state. When removed to another county.

§ 1292. The preceding section includes absolute conveyances of personal property, defeasable by a defeasance, or other instrument; and in such case, the defeasance must be recorded, according to the provisions of such section, or the same is void as to creditors and purchasers from the grantee, without notice. Defeasances of absolute conveyances also to be recorded.

§ 1293. Personal property conveyed in consideration of marriage, when the possession remains with the husband, or the husband and wife, must be taken as the property of the husband, in favor of purchasers without notice, and creditors, unless such conveyance is recorded in the county of the husband's residence, within twelve months after such possession commenced in this state; and if the husband removes to another county, within four months after such removal. Marriage settlements to be recorded or void as to certain persons. On change of residence to be again recorded.

§ 1294. All loans in writing, wills or conveyances, creating estates in personal property, on condition, in reversion or remainder, or in which the use is separated from the right, other than the conveyances hereinbefore in this article specified, and under which possession is suffered to remain for three years, with the party entitled to the estate, or use, vests an absolute estate in the person so having possession for such number of years, as to creditors and purchasers of such person, unless such loan, will, or conveyance, is recorded within such time, in the county where such property is. Loans, in writing, remainders, reversions and conditional estates in personal property, are void, unless recorded within three years.

§ 1295. All loans of personal property not in writing, vests an absolute estate in the person in possession, under such loan, as to purchasers and creditors of such person, after three years from the commencement of such loan, unless within that time the lender commence an action at law, in good faith, for the recovery of the property. Loans after three years, vest an absolute estate as to creditors and purchasers, unless suit brought.

§ 1296. All conveyances of personal property in favor of minor children, except by will, where the custody, control and visible possession thereof, is suffered to remain by the donor with the father or mother of such children, vests an estate in such father or mother, so in possession, in favor of the purchasers and creditors of such father and mother, without notice, unless the conveyance is recorded within three Conveyances to minors of personal property, except by will, must be recorded within three years.

years after such possession commenced in this state, in the county of the residence of such father or mother.

Parol gifts of personal property void until possession is given. Possession of the parent is the possession of the child.

§ 1297. Parol gifts of personal property are inoperative, until the custody, control, management and use of the property passes from the donor to the donee, and is possessed by such donee, or his agent: when the donee is a minor living with his parents, or either of them, the possession of the father or parent, with whom he is living, must be considered the possession of the child.

ARTICLE V.

Of the construction of conveyances, and certain general provisions relating thereto.

SEC.
1298. Attornment of the tenant dispensed with.
1299. All conveyances of land taken as fees simple, unless limited.
1300. Fees tail converted into fees simple.
1301. Contingent remainders in land construed as executory devises.
1302. Construction of the words "without heirs"—"without issue," in certain cases.
1303. Posthumous children take as "heirs," "issue" or "children."
1304. The rule in Shelly's case, abolished.
1305. Tenants of the particular estate cannot defeat remainders dependant on his estate.
1306. Effect of conveyances upon trusts or uses.
1307. When the legal title vests in the trustee.
1308. Any legal restrictions may be imposed, but perpetuities forbid.
1309. Extent of time for which limitations can be executed.
1310. Suits for accumulation, restricted as to time.
1311. Leases restricted to twenty years.
1312. No survivorship between joint tenants.
1313. Waranty by tenant for life void as to remainder, &c.
1314. Covenants of warranty, implied from certain words.
1315. Writings importing to be sealed, are so considered.
1316. Livery of seizin, dispensed with.
1317. Conveyance of a fee, by the tenant for life, passes only his estate.
1318. On payment to a trustee, the party paying is discharged.

SEC.
1319. Power of sale in a mortgage, follows the assignment of the debt.
1320. Trusts in lands only created by writing, implied trusts, &c., excepted.
1321. Trusts void, as to parties without notice.
1322. The record of a declaration of trust, is notice.
1323. Trusts do not descend to heirs, &c.
1324. A right of revocation, subjects the estate to creditors, &c.
1325. The power of disposition given to the owner of an interest, gives a fee as to creditors, &c.
1326. Effect of power of disposition, in one having no estate.
1327. When the power is unlimited, it amounts to a fee.
1328. Absolute powers of disposition, defined.
1329. Any power may be reserved which may be granted.
1330. Conveyance under a power, is good to the extent of the power.
1331. Powers must be executed as conveyances.
1332. When to be executed by will, to be executed as other wills.
1333. When the power is directed to be executed by an insufficient instrument, it may be executed by a sufficient one.
1334. Mode of exercising a power of appointment among several.
1335. When the party having the power of appointment, dies.
1336. When the consent of another required, how given.
1337. Children, includes grand children.
1338. Powers with an interest or trust, irrevocable.

SEC.
1339. Powers or devises on trust to executors, how executed.
1340. Joint powers executed by survivors.
1341. Beneficial powers, liable to creditors' claims.
1342. This article does not embrace simple powers of attorney.

Attornment of tenant dispensed with.

§ 1298. Every conveyance of an estate, in any hereditament, corporeal or incorporeal, is good and effectual without attornment of the tenant; but no tenant who has paid his rent without notice of such conveyance, is liable therefor.

All conveyances of lands construed as fees unless expressly limited.

§ 1299. Every estate in lands, is to be taken as a fee simple, although the words necessary to create an estate of inheritance are not used, unless it clearly appears that a less estate was intended.

Fee tail equivalent to fee simple.

§ 1300. Every estate, in real or personal property, in fee tail, now or hereafter created, becomes an estate in fee simple, and the person in whom the conditional fee vests has the same power over the estate as in case of pure and absolute fees.

A contingent remainder in lands is equivalent to an executory devise.

§ 1301. No estate in lands can be created by way of contingent remainder; but every estate created by any will, or conveyance, which might have taken effect as a contingent remainder, or executory devise, has the same properties and effect as the latter estate.

An estate limited after the death of a person without heirs or issue, construed as issue living at his death.

§ 1302. Where a remainder in real or personal property is limited to take effect on the death of any person, without heirs, or heirs of his body, or without issue, the word "heirs," or "issue," must be construed to mean heirs, or issue, living at the death of the person named as ancestor.

Birth of posthumous child.

§ 1303. Where a future estate is limited to "heirs," "issue," or "children," posthumous children are entitled to take the estate, in the same manner as if born before the death of the parent. Any future estate depending upon the event of the death of a person without heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by descent.

The rule in "Shelly's case" abolished.

§ 1304. Where a remainder created by deed, or will, is limited to the heirs, issue, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the heirs, issue, or heirs of the body, of such tenant for life, are entitled to take as purchasers, by virtue of the remainder so limited to them.

Tenant for life, &c., not to defeat a remainder dependent on his estate.

§ 1305. No estate, or interest of any person, can be defeated, discontinued, or extinguished by the act of any third person having a possession or ulterior interest, except in the cases specially provided by this code.

Uses, trusts, &c., for mere benefit of third persons operate as conveyances to them directly.

§ 1306. No use, trust, or confidence, can be declared of any land, or of any charge upon the same, for the mere benefit of third persons; and all assurances declaring any such use, trust, or confidence, must be held and taken to vest the legal estate in the person, or persons, for whom the same is declared, and no estate, or interest can vest thereby in any trustee.

Certain trust estates may be created vesting the legal title in the trustee.

§ 1307. Nothing in the preceding section contained shall prevent the conveyance of real or personal property, or the issues, rents, and profits thereof, to another, in trust for the use of the grantor, or of a third person, or his family, or for any other lawful purpose; but in such case the legal title vests in the trustee.

If a perpetuity is not created lands may be conveyed for such terms as the parties choose.

§ 1308. Lands may be conveyed within the limits fixed by law, so as to avoid perpetuities, and subject to such other restrictions as are imposed by this code, for such terms as the owner thinks proper; and courts are enjoined to give effect in such cases to the intention and meaning of the parties.

Extent of time for which lands may be conveyed to certain persons. Perpetuity forbid.

§ 1309. Lands may be conveyed to the wife and children, or children only, severally, successively, and jointly; and to the heirs of the body of the survivor, if they come of age, and in default thereof over; but conveyances to other than the wife and children, or children only, cannot extend beyond three lives in being at the date of the conveyance, and ten years thereafter.

Trusts for accumulation merely, not to extend for more than ten years, except for minors.

§ 1310. No trust of estates for the purpose of accumulation only, can have any force or effect for a longer term than ten years, unless when for the benefit of a minor, in being at the date of the conveyance, or if by will at the death of the testator; in which case the trust may extend to the termination of such minority.

No lease for more than twenty years

§ 1311. No leasehold estate can be created for a longer term than twenty years.

No survivorship between joint tenants.

§ 1312. When one joint tenant dies before the severance, his interest does not survive to the other joint tenants, but descends and vests as if his interest had been severed and ascertained.

Warranties by tenant for life.

§ 1313. All warranties by any tenant for life, are void, as against those in remainder, or reversion.

Covenants of warranty implied from the use of the words grant, bargain or sell, or either of them, unless the contrary expressly appear. 2 Ala., 585; 10 Ala., 504.

§ 1314. In all conveyances of estates in fee, the words grant, bargain, sell, or either of them, must be construed (unless it otherwise clearly appear from the conveyance,) an express covenant to the grantee, his heirs, and assigns, that the grantor was seized of an indefeasible estate in fee simple, free from incumbrances, done, or suffered from the grantor, except the rents and services, that are reserved; and also for quiet enjoyment against the grantor, his heirs, and assigns, unless limited by the express words of such conveyance; and the grantee his heirs, personal representatives, and assigns, may, in any action, assign breaches, as if such covenants were expressly inserted.

Writings importing to be sealed instruments, to be so considered.

§ 1315. All writings which import on their face to be under seal, are to be taken as sealed instruments, and have the same effect as if the seal of the parties was affixed thereto.

Livery of seizin dispensed with.

§ 1316. Livery of seizin is not necessary in any conveyance of lands, and the property and possession of the grantor passes as fully by his conveyance as if seizin had been formally delivered.

A convey-

§ 1317. A conveyance made by a tenant for life, or years,

purporting to convey a greater interest than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the estate which the tenant could lawfully convey.

Conveyance by tenant for life or years of greater estate, passes his estate.

§ 1318. In all cases in which a payment has been, or may be made to a trustee, authorized to receive the same, the person making such payment is not responsible for its application, according to the trusts, nor can any right or title derived from such trustee, in consideration of such payment, be impeached on account of any misapplication of the same, unless it be made to appear that the person making such payment colluded with the trustee, or knew of his intention to waste or mismanage the funds.

On payment of money to a trustee, payor not to see to its application, unless in case of collusion.

§ 1319. Where a power to sell lands is given to the grantee, in any mortgage, or other conveyance intended to secure the payment of money, the power is part of the security, and may be executed by any person, or the personal representatives of any person who, by assignment, or otherwise, becomes entitled to the money thus secured.

A power to sell lands, in a mortgage, &c., follows the assignment of the debt.

§ 1320. No trust concerning lands, except such as results by implication, or construction of law, or which may be transferred or extinguished by operation of law, can be created, unless by instrument in writing, signed by the party creating, or declaring the same, or his agent, or attorney, lawfully authorized thereto in writing.

Trusts in lands cannot be created, except by writing, &c. Implied or constructive trusts excepted.

§ 1321. No such trust, whether implied by law, or created or declared by the parties, can defeat the title of creditors, or purchasers for a valuable consideration, without notice.

Trusts void as to parties without notice.

§ 1322. When a trust is created, or declared, by any such instrument in writing, the recording thereof in the county where the lands lie, is equivalent to actual notice to every person claiming under a conveyance made, or lien created, after such recording.

The record of a declaration of trust is notice to all persons.

§ 1323. Upon the death of a sole, or surviving trustee of an express trust, the trust estate does not descend to his heirs, or pass to his personal representatives.

On death of trustee, estate not to pass to heirs or representatives.

§ 1324. When the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor must be taken as the absolute owner of the estate conveyed, as to the rights of creditors and purchasers.

Reservation of right of revocation; effect of.

§ 1325. When an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate, for life, or years, such estate is changed into a fee absolute, as to the rights of the creditors and purchasers, but subject to any future estates, limited thereon, in case the power is not executed, or the lands sold for the satisfaction of debts, during the continuance of such particular estate.

Power of disposition to the owner of particular estate; effect of.

§ 1326. When a like power of disposition is given to any person, to whom no particular estate is limited, such person also takes a fee, subject to any future estate which may be limited thereon; but absolute in respect to creditors and purchasers.

Effect of power of disposition in one not the holder of particular estate.

When power of disposition not limited by a trust or remainder, the donee takes a fee.

§ 1327. In all cases where such absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the donee of the power, he is entitled to an absolute fee.

Absolute powers of disposition defined.

§ 1328. Every power of disposition is deemed absolute, by means of which the donee of such power is enabled in his life time to dispose of the entire fee for his own benefit; and where a general and beneficial power to devise the inheritance is given to a tenant for life, or years, it is absolute within the meaning of the last two sections.

Any power may be reserved which might be granted to another.

§ 1329. The grantor in any conveyance may reserve to himself any power beneficial, or interest, which he may lawfully grant to another.

A conveyance by virtue of a power is good to the extent of the power.

§ 1330. No disposition by virtue of a power is void in law, or equity, on the ground that it is more extensive than was authorized by the power: but every estate or interest thus created, is valid, so far as the same is embraced by the power.

Powers must be executed as conveyances.

§ 1331. No power of disposing of real estate can be executed, except by an instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under such power, if the person executing the power were the actual owner.

A power to be executed by will must be executed as other wills.

§ 1332. When a power to dispose of lands is confined to a disposition by devise, or will, the instrument of execution must be by will, duly executed, as wills of real estate are required by law.

Where donor directs execution by insufficient instrument, may be executed by sufficient one.

§ 1333. Where the donor of a power has directed it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but may be executed by an instrument sufficient to pass such estate.

Where a disposition is directed to be made among several.

§ 1334. Where a disposition under a power is directed to be made, by, between, or among several persons, without specifying the sum or share to be allotted to each, all the persons designated are entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the distribution or apportionment made by such trustee cannot be impeached in law or equity, on the ground that it is unsubstantial, illusory, or nominal.

Where trustee having a discretion, dies, fund must be equally divided.

§ 1335. If the trustee of a power, with the right of selection, dies, leaving the power unexecuted, its execution may be decreed in equity, for the equal benefit of all the persons designated as the objects of the trust.

When consent of a third person is required must be in writing, in or on the instrument.

§ 1336. When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed; or must be certified in writing thereon; in the first case the instrument, and in the second, the writing, must be signed by the party whose consent is required.

Disposition among children, grand

1337. Where a disposition under an appointment, or a power, is directed to be made to, or among the children of

any person, without restricting it to any particular children, it may be exercised in favor of the grand children, or other descendants of such person. children may take under the power.

§ 1338. Every power, beneficial, or in trust, is irrevocable, unless an authority to revoke it is contained or reserved in the instrument creating the power. Powers; when irrevocable.

§ 1339. Where lands are devised to several executors, or a naked power given them by will, to sell, the survivor, or survivors, and the acting executor, or executors, when any one or more of them resigns, or refuses to act, or is removed by a court of competent authority, and also an administrator with the will annexed, has the same interest in, and power over such lands, for the purpose of making sale thereof, as the executors named in such will might have had. Lands devised to executors to be sold, or power of sale given them, may be sold by acting executor or administrator.

§ 1340. Where a power is vested in several persons, and, previous to the execution, one or more of such persons die, it may be executed by the survivor or survivors. Joint power may be executed by the survivor in case of death.

§ 1341. Every special and beneficial power is liable in equity to the claims of creditors, and the execution of the same may be decreed for their benefit. What powers are liable to the claims of creditors.

§ 1342. The provisions of this article, in relation to powers, do not extend to a simple power of attorney, to convey lands in the name, and for the benefit of the owner. Not to extend to a simple power of attorney.

ARTICLE VI.

In relation to entering the satisfaction of mortgages.

SEC.
1343. On payment of the debt, satisfaction to be entered on the mortgage.
1344. Penalty for refusal to enter satisfaction.

§ 1343. Any mortagee who has received satisfaction of the amount secured by such mortgage, must, if the same has been recorded, at the request of the mortgagor, enter satisfaction upon the margin of the record thereof, which operates as a release to such mortgage, and a bar to all actions thereon. On payment of the debt satisfaction to be entered on the mortgage.

§ 1344. Any mortgagee who fails, either in person or by attorney, for three months, after such payment and request, to make such entry, forfeits to the party aggrieved two hundred dollars. Penalty for refusal to do so.

ARTICLE VII.

Imperfect titles how perfected.

SEC.
1345. Written contracts for conveyance, how executed on the death of the party.
1346. Representative may be compelled to convey.
1347. Proceedings to enforce such contracts.
1348. Notice to the guardians of minors, &c.
1349. Fees of the judge of probate.

When a party who has, made a written agreement to convey land, dies, his executor or administrator must convey.

§ 1345. In all cases of written agreements, or contracts, for the conveyance of lands in this state, where the person executing the same dies before the execution of the conveyance, the personal representatives of such person may execute such conveyance according to the forms prescribed in this chapter for the conveyance of real estate, to the person to whom such agreement or contract was made, his heirs or assigns.

Judge of probate may compel the representative to convey.

§ 1346. If the personal representative refuses to execute the conveyance in the case provided for in the preceding section, he may be compelled, by application to the judge of probate of the county in which letters testamentary, or of administration, were granted.

The application must be made to the judge in writing and state the names of the heirs, &c.

§ 1347. Such application must be by petition, describing the contract, or agreement, the lands to be conveyed, and stating the names of the heirs of the contracting party, which of them are of full age, and which minors; and the judge of probate must give notice of such petition by publication in some newspaper published in his county, and the county in which the lands lie; or if none is published therein, the paper published in the place nearest to the county site of such county, once a week for six successive weeks; and if on the hearing of such application, it appears that such agreement or contract was fairly made, and the consideration or conditions of the same paid or performed, such judge must decree the conveyance to be executed by the personal representative of the party so contracting, according to the terms thereof; and such personal representative failing to execute such conveyance, in conformity with such decree, must be imprisoned until he executes the same; either party having the right to appeal, as on other final judgments and decrees of the probate court.

The judge must give notice of the petition.

He may compel the representative to convey by imprisonment.

Notice to be given to the guardians of minors, &c.

§ 1348. In all cases in which minor heirs are interested in such application, notice thereof must be given to the guardian; and if there is no guardian, the judge must appoint a guardian to protect their interest.

Fee of judge of probate.

§ 1349. The fee of the probate judge for hearing an application, and making the necessary orders and decrees under this article, is three dollars, to be paid by the unsuccessful party.

ARTICLE VIII.

Grants by the state and the United States.

SEC.
1350. Grants by the state made by patent.
1351. Grants and patents recorded by the secretary of state.
1352. Patent does not issue until payment of the money.
1353. Patents of the state or United States may be recorded, &c.

§ 1350. For the conveyance of any real property belonging to the state, a patent issues under the seal of the state, signed by the governor and attested by the secretary of state. Grants by the state are made by patent.

§ 1351. The secretary of state must record, in well bound books, all grants and patents issued by the state. Grants and patents recorded, &c.

§ 1352. All purchasers of real property belonging to this state, their heirs, and assigns, except in the cases otherwise provided by this code, are entitled to receive a patent therefor, on producing to the secretary of state a certificate signed by the state treasurer, that the amount due for such real estate has been paid into the state treasury. A patent issues on payment, certified by the treasurer.

§ 1353. Any persons having patents from this state, or the United States, to lands in this state, may have the same recorded in the office of the judge of probate of the county in which such lands lie, and a certified copy of such record is evidence in any court of this state. Patents may be recorded, and copies received as evidence.

CHAPTER II.

DOWER.

ARTICLE 1. In what dower consists, and how relinquished.
" 2. Proceedings for the assignment of dower, and how assigned.

ARTICLE I.

In what dower consists, and how relinquished.

SEC.
1354. Dower defined; of what lands it may be claimed.
1355. Extent of the widow's dower interest.
1356, 1357. Relinquishment, how made. How when wife is out of the state.
1358. Infants may release or convey dower.

§ 1354. Dower is an estate for the life of the widow, in a certain portion of the following real estate of her husband, to which she has not relinquished her right during the marriage: Dower defined.

1. Of all lands of which the husband was seized in fee during the marriage. Of what lands the widow is dowable.

2. Of all lands of which another was seized in fee to his use.

2. Of all lands to which at the time of his death he had a perfect equity, having paid all the purchase money thereof.

Extent of the widow's dower interest.

§ 1355. The quantity of the dower interest is as follows:

1. When the husband dies, leaving no lineal descendants, and his estate is not insolvent, his widow is entitled to be endowed of one-half his lands.

2. If in such case his estate is insolvent, to one-third part thereof.

3. When there are lineal descendants, then to one-third part thereof, whether the estate be insolvent or not.

Relinquishment of dower; how made, &c.

§ 1356. The wife may relinquish her right to dower, by joining with her husband in a conveyance of the land, in the presence of two witnesses, who must attest the same; or subsequent to such conveyance by the husband, by an instrument in writing, releasing her right to dower in the land so conveyed, executed by her in the presence of two witnesses, and attested by them, or acknowledged as provided by section 1282.

When the wife is out of the state.

§ 1357. Married women residing or living beyond the limits of this state, may in like manner convey or release their right of dower, to any land within this state; such conveyance being acknowledged by her, as other conveyances executed beyond this state.

Infants may relinquish dower.

§ 1358. Married women may convey or release their right of dower, whether of full age or not.

ARTICLE II.

Proceedings for the assignment of dower, and how assigned.

SEC.

1359. Dwelling house, &c., allowed to the widow until assignment of dower.
1360. Dower assigned by metes and bounds, on petition to the judge of probate.
1361. Contents of the petition.
1362. Notice given, and a day fixed for the hearing.
1363. Guardians appointed to defend for minors.
1364. When notice has not been given, citation to issue, and publication made as to non-residents.
1365. Proceedings to allot dower after decree.
1366. Oath of commissioners; mode of allotting dower.
1367. Dwelling house allotted widow when the estate is solvent.
1368. Land lying in different counties embraced in the same petition; but probate judge not to take jurisdiction of land out of his county, aliened by the husband.
1369. If land aliened by the husband cannot be set off by metes and bounds, petition to be filed in chancery.
1370. She is dowable of the value at the time of alienation.
1371. When judge of probate incompetent, petition to be in the circuit court.
1372. Dower barred after three years.

Widow may retain dwelling house and plantation until the assignment of dower.

§ 1359. The widow may retain possession of the dwelling house where her husband most usually resided, next before his death, with the offices and buildings appurtenant thereto, and the plantation connected therewith, until her dower is assigned her, free from the payment of rent.

Dower assigned by metes and

§ 1360. When the dower interest can be assigned by metes and bounds, the widow, heir, or personal representative of

the husband, may petition the judge of probate of the county where the land in which dower is claimed, or any portion thereof, lies, to cause assignment of dower to be made.

bounds by petition to the judge of probate of the county where any of the land lies.

§ 1361. The petition must contain:

Petition must contain:

1. The facts on which the widow's claim to dower rests, with a description of the land in which dower is claimed, by its designation at the land office, when that can be done, if not by metes and bounds, or such other description thereof as will identify it.

1. The claim of dower and a description of the land.

2. When the land in which dower is claimed has been aliened in the life of the husband, the name of the alienee and his residence, if known; if he is not in possession of the land, the name of the person in possession.

2. When it has been aliened, the name of the person in possession.

3. The names of the widow and heirs at law, stating which are minors and married women, and the name of the personal representative of the husband, stating the county in which each reside, if residents in this state, and which of them, if any, are non-residents.

3. Name of the widow and heirs at law and representatives; their residence and which are minors.

§ 1362. Ten days' notice must be given, to those adversely interested, of the time when such petition will be filed, and an order for the assignment of dower prayed; and thereupon, if the persons so notified are of full age, the court must proceed without delay to hear and determine the right to dower, unless good cause be shown for a continuance.

Notice to be given the parties, and a day fixed for hearing the petition.

§ 1363. If any of the persons adversely interested are minors, guardians must be appointed to protect their interests.

Guardians to be appointed for minors interested.

§ 1364. If such notice has not been given, the court must appoint a time for hearing the petition, and cause all persons interested to be cited there to appear. If any are non-residents, publication must be made of the time when the petition will be heard, for at least thirty days, in a newspaper published in the county; if there be none, then in the county nearest thereto, which shall be notice.

When notice has not been given, citation to be issued to parties interested and publication made as to non-residents, which shall be notice.

§ 1365. If, on the hearing of the petition, the court considers the widow entitled to dower in the lands described, a decree must be made, that she is entitled to dower in certain lands, describing them, and of what portion thereof, and directing the sheriff to summon five freeholders not connected with the parties by consanguinity or affinity, to allot and set off, by metes and bounds, the widow's dower, having regard to the improvements and quality of the land, as well as the quantity of the dower.

Proceedings to allot dower to the widow after decree in her favor.

§ 1366. Before proceeding to make the assignment, the commissioners must take an oath, which may be administered by the sheriff, impartially, and to the best of their skill and ability, to assign the dower pursuant to the decree. They must set off and allot, by metes and bounds, the land assigned by them as dower, and make return thereof in writing, subscribed by them, to the judge of probate, which, if confirmed by the court, must be recorded, and vests in the widow an estate for her life, in the lands so assigned as dower.

Oath of the commissioners.

Dower set off by metes and bounds, and return made to judge of probate for his approval.

§ 1367. When the estate of the husband is solvent, and

Dwelling house to be assigned to the widow if the estate is solvent, &c.

the heirs will not thereby be prejudiced, the entire dwelling house may be assigned to the widow as part of her dower, in lieu of a corresponding portion of her dower in the land, equal in value to that portion of the dwelling house of which she is not dowable as matter of right.

Land lying in different counties may be included in the same petition, &c. But judge cannot take jurisdiction of land aliened by the husband out of his county.

§ 1368. Land of which the widow may be endowed, lying in several counties, may be embraced in the same petition, and in such case, the judge of probate may direct his writ to the sheriff of such counties, to summon five freeholders, as in other cases, to allot dower of the lands in their county, (specifying them,) according to the provisions of section 1365. But the probate judge has no jurisdiction to direct the allotment of dower out of his county, when the land has been aliened during the life of the husband.

When judge of probate must decline jurisdiction.

Application to be made to the chancellor.

§ 1369. When land out of which dower is demanded has been aliened by the husband, and from improvements made by the alienee, or from any other cause, an assignment of dower by metes and bounds would be unjust, the judge of probate must decline jurisdiction, and application must be made to the court of chancery.

Dowable of the value of the land, the interest to be paid annually, unless certain sum agreed to.

§ 1370. In such case, the widow is dowable of the value of the land at the time of the alienation, the interest on one-third part thereof to be paid to her annually, during her life, and secured, if necessary, by a lien on the land, unless the parties agree to a compensation in gross, which the court must give effect to.

When the judge of probate is incompetent, the petition may be made to the circuit court.

§ 1371. When the judge of probate is, from any cause, incompetent to sit, the petition must be filed in the circuit court, which is hereby invested with all the powers conferred on the judge of probate, and such court must proceed and make such order, as the judge of probate should have done.

Suits for dower barred after three years.

§ 1372. All suits or proceedings for dower, must be commenced within three years after the death of the husband, and not after.

AD-185748

p 47

^ When the claim or rights on an alienee of the husband or any one claiming under such alienee are involved in such suit or proceeding.

Title 2.

PRIVATE CORPORATIONS.

CHAPTER 1. Free banking incorporations.
" 2. For the construction of macadamized, graded, turnpike, rail, or plank roads.
" 3. Of the incorporation of companies for mining, quarrying, and manufacturing purposes.
" 4. General provisions, in relation to private corporations.

CHAPTER I.

FREE BANKING INCORPORATIONS.

SEC.
1373. Proceedings to commence free banking.
1374. Printing and engraving of notes.
1375. Countersigned notes equal to the stock in value, if at par, to be delivered.
1376. Amount of stock required.
1377. What done before the circulation of the notes.
1378. The stock is held for the redemption of the notes.
1379. Plates and dies kept by the comptroller.
1380. Punishment of comptroller for issuing an excess of notes beyond the stock.
1381. Number of associates and amount of stock.
1382. Certificate under seal to be acknowledged and recorded; its contents.
1383. Banking powers; appointment and removal of officers.
1384. Shares personal property; how transferrable, &c.
1385. Name, how changed, and stock, how increased.
1386. Contracts to be in writing, and signed, &c., and process issued for and against it by name.
1387. On return of "no property;" scire facias to members.
1388. Process, how served on the association.
1389. If not lawfully organized, the members liable as partners.
1390. It may hold real estate for certain purposes.
1391. But for none other; its real estate, how conveyed.
1392. The interest of a member, alone subject to execution against him.
1393. Protest of the notes, and notice to the comptroller.
1394. On protest of one-tenth, its business to be closed by a commission from the comptroller.
SEC.
1395. Commissioners' bond may be sued by the party injured.
1396. Statements of affairs, and the assets, &c., to be delivered to the commissioners.
1397. Penalty for refusal to make such delivery.
1398. Their property vests in the commissioners.
1399. The business to be wound up, to reduce the notes, &c.
1400. Comptroller to make publication of the failure, &c.
1401. Also to sell the stock to redeem the notes.
1402. The notes received in payment of debts to it, and returns and settlement, made by the commissioners with the comptroller.
1403. Money collected, applied to the payment of the notes.
1404. When the notes are redeemed, the assets to be returned.
1405. Commissioners' account, how audited, and compensation fixed.
1406. Commissioner retains, for two years, enough to redeem the notes not presented.
1407. Notes may be sued on as other notes.
1408. Conversion of the property after notice of commission, a felony.
1409. The free bank receives the dividends of the stock until protest.
1410. 1411. Statement of the business made annually under oath to the comptroller; statement to be published.
1412. The business closed on failure to make the statement.
1413. 1414. Taxes paid by such associations.
1415. Notes of such banks receivable for public dues.
1416. Use of bills of foreign banks restricted.

Sec.		Sec.	
1417.	Notes payable on demand; penalty for usury, &c.	1420.	Issue of notes without authority; penalty.
1418.	Lists of share holders and their shares, &c.	1421.	Right of repeal or amendment reserved.
1419.	Mutilated notes cancelled and others issued.	1422. 1423.	Expenses of comptroller and fees of judge of probate.

Proceedings to commence banking by free banks.

§ 1373. Any person, or association of persons, desirous to engage in the business of banking, must deposit with the state treasurer, to the credit of the comptroller, money sufficient to pay for the engraving and printing, as hereinafter prescribed, of such quantity of circulating notes as such person or association may determine; and thereupon the comptroller must have such notes engraved and printed, so as to guard against counterfeits, and of various denominations, not less than five dollars, nor for any sum which is not a multiple of five, which notes must be stamped upon their face: "Secured by pledge of United States Stock;" countersigned, numbered, and registered in proper books by the comptroller; which books must be kept in his office.

Payment for engraving the notes.

§ 1374. The comptroller must defray the expenses of engraving and printing such notes out of the money deposited with him

Countersigned notes to be delivered, equal to the United States stock deposited, if at par, or to its market value.

§ 1375. On legally transferring to the comptroller such portion of the United States stock as is prescribed by the following section, such person or association is entitled to receive from the comptroller an amount of such countersigned notes equal to the value of such stock upon its face, if the same is at par value in the city of New York; and if not at par in such city, an amount of such notes equal to the market value of such stock in such city.

The stock must amount to at least $100,000, and a greater amount of notes must not be delivered.

§ 1376. The amount of such stock, so transferred, must be such as to entitle the person or association to at least one hundred thousand dollars of such notes; and the comptroller must in no case deliver to such person or association more than the amount of the stock as hereinafter provided for.

Notes to be signed and made payable at the place of business, and then put in circulation.

§ 1377. Such person or association, after having signed such notes, and made them payable, on demand, at the place of business within this state, of such person or association, may loan and circulate the same as money, according to the usual course of banks.

The stock is held for the redemption of the notes.

§ 1378. The stock transferred to the comptroller is held by him exclusively for the redemption of the notes which may be put in circulation under the preceding section.

The plates and dies are to be kept by the comptroller.

§ 1379. The plates and dies for the engraving and printing such notes, are to remain in the custody of the comptroller.

Punishment of comptroller for issuing a greater amount of bills than the stock deposited.

§ 1380. The comptroller must not countersign or deliver a larger number of notes than such person or association is entitled to under the provisions of section 1375; and any comptroller violating the provisions of this section, must, on conviction, be punished by a fine of five thousand dollars, and imprisoned in the penitentiary not less than five years; one or both, at the discretion of the jury.

Any number may be associated, but capital stock not less than $100,000 or more than $500,000.

§ 1381. Any number of persons may associate together, to establish offices of discount, deposit, and circulation, upon the terms and conditions, and subject to the liabilities prescribed in this chapter; but the aggregate amount of the capital stock of any such association must not be less than one hundred thousand nor more than five hundred thousand dollars.

Certificate under seal to be made by parties.

§ 1382. Such persons must, under their hands and seals, make a certificate specifying

1. The name to distinguish such association, and to be used in its dealings.

2. The place where the operations of discount and deposit of such association are to be carried on, designating the particular city, village, or town.

3. The amount of capital stock of such association, and the number of shares into which it is divided.

4. The names and place of residence of the share holders, and the number of shares held by each of them respectively.

5. The time when such association is to commence and terminate.

Certificate to be acknowledged and recorded.

Which certificate must be acknowledged, or proved, as conveyances of real estate are by this code required to be acknowledged or proved; and must be recorded in the office of the judge of probate of any county where any office of such association is established; and a copy thereof filed in the comptroller's office.

Powers of the association for banking purposes.

§ 1383. Such associations may carry on the business of banking, by discounting bills and notes; receiving deposits; buying and selling gold and silver bullion; foreign coins, and bills of exchange; by lending money upon real and personal security, and by exercising such incidental powers as are necessary to carry on business; to choose one of their number as president of such association; to appoint a cashier, and such other officers and agents as their business may require: and to remove such president and other officers and agents, and appoint others in their place.

Appointment and removal of officers.

Shares personal property, and transferrable on the books, &c.

§ 1384. The shares of such association are personal property, and are transferrable on the books of the association, in such manner as is agreed on in the articles of association: and every person becoming a shareholder by such transfer, succeeds to all the rights and liabilities of the person whose shares are so transferred; but no changes made in the articles of association, or in the parties associated, can take away or impair the rights, remedies, or security of the existing creditors, nor is such association dissolved by the death or insanity of any of the shareholders therein.

The death or insanity of the stockholders does not dissolve it.

Name of the association may be changed and capital stock increased, &c.

Certificate of the change to be recorded.

§ 1385. Any association formed under this chapter, may by their articles of association provide for a change of the amount of their capital, and of the number of their associates, from time to time; but their capital stock must never exceed five hundred thousand dollars; and a certificate showing such change must be made out, acknowledged, or proved, and filed, and recorded, according to the provisions of section 1382.

Contracts and notes to be signed by the president and cashier. The association may sue and be sued by its name

§ 1386. All contracts made by any such association, and all notes by them issued, and put in circulation, must be signed by the president and cashier thereof, and in all legal proceedings brought or prosecuted by, on the part of, or against such association, the name thereof, assumed to distinguish it, may be used; and the names of the persons composing such association need not be set forth in such proceedings; nor do such proceedings abate, on account of the death, resignation, or removal from office, of the president, any officer thereof, or person therein interested; and the property of such association, and moneys due to it, is subject to debts, judgments, or decrees, in the same manner, and by the same process, as if owing by an individual.

Its property subject to execution, &c.

On return of no property scire facias may issue.

§ 1387. Upon any judgment or decree rendered against such association, and a writ of execution issued thereon, and returned "no property," a writ of scire facias may be issued on such judgment or decree, against any one or more of the shareholders of such association, or his legal representatives, requiring him, or them, at the next term of the court after the issue thereof, to show cause why such judgment should not be had, of his or their lands, tenements, or goods, or chattels; and the court at such term, if such writ of scire facias has been served fifteen days before the first day thereof, must proceed, and render judgment in the premises according to law.

Process; how served on the association.

§ 1388. In any suit or proceeding against such association, the service of summons, subpœna, or any other process, must be made only on the president or cashier thereof, or person discharging the duties of one of such offices: and if there be no such officer, or person discharging the duties thereof residing at the place of doing business of such association, then such service may be made upon any two members of such association.

If not organized properly the members are liable as partners.

§ 1389. If such association is not organized, so that proceedings can be brought against it, then any one or more of its members may be proceeded against individually, or collectively as partners.

Real estate may be held for certain purposes.

§ 1390. Such association may hold and convey real estate for the following purposes:

1. Such as is necessary for its immediate accommodation, in the convenient transaction of its business.

2. Such as may be mortgaged to it in good faith by way of security for loans made by, or moneys due to such association.

3. Such as may be conveyed to it in satisfaction of debts previously contracted, in the course of its dealings.

4. Such as it may purchase at sales, under judgments, decrees, or mortgages in its favor.

But for no other purposes.

§ 1391. Such associations must not purchase, hold, or convey real estate in any other case, or for any other purpose, than is specified in the preceding section; and the members thereof must, in their articles of association, under their hands

and seals, authorise some officer thereof, his successors, or some other person to sell, assign, and convey such real estate from time to time, free from any claim thereon against any shareholders, or any person claiming under them; but they may also, by a special power of attorney, authorize any other person to do the same. Its real estate; how conveyed.

§ 1392. The property of such association, or its effects, are not liable to be taken by any attachment, execution, or other process against any of the persons composing the same, for their own individual debts, engagements, or liabilities, but the interest of any person therein may be sold, and conveyed, to satisfy and discharge such debts, engagements, or liabilities, by a decree in chancery. The property is not subject to execution against the members. Their interest is subject.

§ 1393. If the maker, or makers of any such circulating notes, at any time during the usual hours, and at the usual places of business, fail, or refuse on demand, to redeem such notes in the lawful money of the United States, the holder of the same may cause the same to be protested; the fact and date of such demand and protest must be endorsed on such notes, and signed by the notary, and the holder must immediately give information by mail, or otherwise, to the comptroller, designating in such notice the number on the notes, and the makers thereof; whereupon interest at the rate of fifteen per cent. per annum accrues upon the notes thus protested, from the date of the protest, until the same are redeemed; but no interest accrues unless the comptroller is informed of such protest and demand within thirty days thereafter; and after the expiration of such thirty days, such interest runs from the time the comptroller receives such notice. Protest of the notes, and notice thereof to the comptroller. Interest accrues after protest and notice.

§ 1394. Whenever the comptroller ascertains that the person, or association banking under the provisions of this chapter, have failed, or refused to redeem their notes, to the extent of one-tenth of the amount of the notes delivered to them for circulation, he must give notice to such person, or association, that unless the notes protested under the preceding section are redeemed within twenty days after service of such notice, he will proceed to close his or their banking operations; and if such notes are not redeemed accordingly, the comptroller must appoint three commissioners, who must give bond, with surety, payable to the comptroller of the state of Alabama, in such sum as he may require, and conditioned for the faithful performance of their duties; which bond must be approved by the comptroller, and recorded, and kept in his office. On protest of one-tenth of the notes issued the comptroller closes their business by commissioners. Commissioners give bond.

§ 1395. Suits may be maintained on such bond by any person injured by the failure of such commissioners, or either of them, to discharge their duties in his own name, until the whole penalty thereof is exhausted. Any person injured may sue on the bond.

§ 1396. The person, or association, must deliver a statement in writing, and, on oath, of all the real and personal property belonging to him, or them, derived from, or engaged in his or their banking operations, including money, debts, Statement of assets to be delivered to commissioners, and also assets and

evidences of debts due.

choses in action, and effects of every kind in action; and deliver such property, money, evidences of debt, and other choses in action, to such commissioners, within ten days after demand made by them, or either of them.

Penalty for refusing to deliver assets to commissioners.

§ 1397. If the cashier, president, or any other officer or person, in charge of any property, evidences of debt, money, or choses in action, knowing that the same belongs to such person or association, fails within the time prescribed in the preceding section to deliver to such commissioners, on demand, such statement, and such property, money, evidences of debt, and choses in action, he is guilty of a misdemeanor, and, on conviction, must be fined not less than one thousand dollars.

Assets and evidences of debt vest in commissioners appointed.

§ 1398. Upon the appointment of such commissioners, and the execution, and approval of their bond as provided for in this article, such property, choses in action, evidences of debt of such person, or association, vest in such commissioners for the purposes hereinafter provided for.

Debts to be collected and assets disposed of; to redeem the notes, &c.

§ 1399. Such commissioners must proceed, as soon as may be, to collect all the debts, and dispose of all the property belonging to, or connected with the banking operations of such person or association, so far as is necessary to the redemption of the notes put in circulation by such person or association, and which are not redeemed by the deposit of stock with the comptroller.

Publication to be made of closing business by comptroller.

§ 1400. The comptroller must make publication in a newspaper, at Montgomery, Mobile, and Huntsville, of the fact, whenever any such person or association have failed, or refused to redeem his or its notes, to the extent prescribed in section 1394, that the banking affairs of such person, or association, are in the hands of commissioners for settlement; and that all persons holding such notes present the same for payment within twelve months after the notice thus given.

Comptroller must sell stock to redeem notes issued.

§ 1401. The comptroller, upon such failure or refusal, must proceed to convert the stocks deposited with him by such person, or association, into such funds as will enable him to redeem such notes, or bills, as they are presented; and must continue to redeem the same until the stocks so deposited with him are exhausted.

Commissioners must receive notes in payment of debts and purchases.

§ 1402. Such commissioners must receive in payment of the debts due to such person, or association, and for property sold by them, the circulating notes of the bank thus placed in liquidation, adding interest, at the rate of fifteen per cent. per annum, from the time of the appointment of commissioners, or from the time of such protest; and must make quarterly returns to the comptroller, stating the amount and character of the effects in their hands; the amount of collections made by them; the amount of circulating notes they have taken in; and must pay to the comptroller, at the time they make such return, all money received by them.

Returns made to comptroller and money paid over to him.

Money received to be

§ 1403. The money so paid to the comptroller by such commissioners, must be applied by him to the payment of

such notes as are still unredeemed, and are presented for payment. applied to redemption of notes.

§ 1404. When the comptroller ascertains that all the notes within one per cent. of the amount given out by him, have been redeemed, he must report the same to the commissioners, who must, within ten days thereafter, settle the affairs of such bank, and deliver all the property and effects in their hands to the person or association from whom the same were received, except such funds or effects as are necessary to redeem the notes then outstanding. When all but one per cent. are redeemed, assets property, &c., returned to association.

§ 1405. Such settlement must be audited by the judge of probate of the county in which such bank did business, who must make such allowance to such commissioners as he may deem just; not to exceed ten per cent. on the amount of money received by them on debts collected. Commissioners' account audited by judge of probate and allowance for their services to be made.

§ 1406. The funds retained, or which are realized from the effects retained to provide for the redemption of the outstanding notes, must be paid to the comptroller, who must redeem with the same any bills which may be presented within two years after the appointment of commissioners, in the order in which the same are presented; and at the end of such two years, pay the balance of effects which remain in his hands, after deducting the expenses thereon, to the person or association to whom they belong. Money retained must be appplied to notes presented in two years, and then returned to the association.

§ 1407. Any holder of any note issued by such person, or association, for the purpose of circulation, may recover on the same after the expiration of such two years, at any time before the same is barred by the existing laws. Notes may be sued on until barred, as other suits.

§ 1408. After notice by the comptroller of the appointment of commissioners, to settle the affairs of any banking institution, under the provisions of this article, it is not lawful for the president, or other officer of such institution, to collect, or receive any debts due, or to dispose of any property, or use money, or effects belonging thereto, or to transact any of the usual business of banking, or of discounting notes, or dealing in bills of exchange; and any president, officer, or person, except the commissioners, knowingly violating the provisions of this section, is guilty of felony, and, on conviction, must be fined not less than two thousand dollars, and imprisoned in the penitentiary not less than two or more than ten years. Felony for any person to collect debts or dispose of the property, after notice of the commissioners.

§ 1409. The comptroller must give to any person, or association, transferring stock in pursuance of this article, powers of attorney to receive interest or dividends thereon; but such powers must be revoked upon such person, or association, failing or refusing to redeem the notes issued for circulation, or whenever, in the opinion of the comptroller, such stock, by depreciation, becomes an insufficient security; and the comptroller, upon application of the person, or association by whom such stock was transferred, may, in his discretion, change or transfer the same for other stocks of the same kind; or may give up such stocks, or any part thereof, upon receiv- Association draws the interest on the stock deposited until its notes are protested. Comptroller may allow a change into other stock, or return the stock on receiving notes issued.

ing and cancelling an equal amount of notes delivered to him by such person or association.

Statement of affairs of association, under oath, to be annually made to comptroller.

§ 1410. Every person, or association of persons, banking under the provisions of this article, must, on the second Monday of January in each year, make out and transmit to the comptroller, in the form to be prescribed by him, a full statement of the affairs of the bank, verified by the oath of such person, or of the president or cashier; which statement must show the amount of capital stock deposited with the comptroller; the value of the real estate held by the bank, specifying the amount necessary for the transaction of business; and the amount held as security for, and in payment of debts; the shares of stock held by such association; the names of the shareholders; the amount of circulation out; the amount of specie on hand, on the first day of June in the preceding year, and the first day of January in the same year; and the amount due the bank from every source, on such first day of January, specifying the amount of such debt considered bad.

Statement to be published by comptroller.

§ 1411. The comptroller must have such statement published in some newspaper published in the county in which such bank does business, or nearest thereto, if there is none in such county; which publication is to be made at the expense of such bank.

On neglect to return statement the association to be suspended and commission to issue.

§ 1412. If any such person, or association, fail to transmit such statement, so made out, to the comptroller, he shall at once give notice to such person, or association, to suspend their banking operations, and appoint commissioners, whose duty it is to proceed as in the case of the failure of such person, or association, to redeem his or its bills, as herein provided for, and, with the comptroller, to wind up the bank as in the manner hereinbefore prescribed.

Stock, notes and property of the association are assessed for taxes to the association, &c.

§ 1413. The stock deposited with the comptroller, and the notes for circulation delivered by him, must be assessed for taxation to the person or association to whom the same belong; and also the real and personal property subject to taxation; and the president and cashier of any banking association, formed under this article, must give in, on oath, a list of such taxable estate.

Rate of taxation of the stock, property, &c.

§ 1414. The rate of taxation assessed on the stock deposited with the comptroller, is for every hundred dollars, and at that rate, twenty cents; and on all other property belonging to such association, the same rates as if assessed to individuals.

Notes receivable in payment of public dues until notice of failure of the association.

§ 1415. The notes of any person or association, banking under the provisions of this act, which are issued for circulation, must be received by the treasurer of the state, tax collectors, and other public agents, in the payment of the public dues; and all such tax collectors and other agents are exempt from all liability for receiving such notes, until sufficient time has elapsed for them to receive the notice published by the comptroller, as provided for by section 1400; such time to be computed from the date of such publication at the seat of government, at the rate of five days for each hundred miles

distance from that point to the county seat of the county of such tax collectors or agents, unless they have actually received such notice at an earlier date.

Right to use the bills of foreign banks by the association restricted.

§ 1416. The cashier or other officer of any bank established under the provisions of this article, must not pay out or use in discounting promissory notes, or in the purchase of bills of exchange, or in payment of checks drawn upon general deposit, or in any manner, except exchange for their own circulating notes, give circulation to the bills of banks of other states; but such bills may be received for any purpose in the usual transaction of banking business, to be returned to the banks from which they issued.

The notes to be payable on demand.

§ 1417. The circulating notes to be issued by the comptroller, must be made payable on demand and without interest; and any individual banker, who discounts any note, bill of exchange or draft, at a higher rate of interest than eight per cent. per annum, not including the difference of exchange, is guilty of a misdemeanor.

Penalty for usury.

Lists of the names and residence of shareholders to be filed with comptroller and judge of probate annually.

§ 1418. The president and cashier of every such association, must at all times keep a correct list of the names and places of residence of all the shareholders of such association, and must file a copy thereof, verified by their affidavit, in the office of the judge of the probate court of the county in which the office of such association is; and also in the office of the comptroller, on the second Monday of January and July, in each year.

Mutilated notes to be cancelled and others issued.

§ 1419. The comptroller must receive and cancel mutilated notes of circulation issued by him, and give others in their place.

Issue of notes, &c., to circulate as money, without authority, a misdemeanor.

§ 1420. Any person, or officer of any company or association, other than of the chartered banks of this state, who issues or puts in circulation any notes, bills, bonds, checks or other paper, to circulate as money, contrary to, or not in conformity with the provisions of this article, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred, or more than five hundred dollars.

Fine.

The power of modification or repeal reserved.

§ 1421. The general assembly have the power to repeal or modify any of the provisions of this chapter, and such repeal or modification may, if so provided, operate upon any person or association of persons engaged in the business of banking under this chapter.

Expenses o comptroller paid by the association.

§ 1422. All expenses incurred by the comptroller, in executing the provisions of this chapter, must be paid by the person or association at whose instance the same accrues.

Fees of the judge of probate.

§ 1423. For proving, acknowledging and recording the certificate required by section 1382, the same fees are allowed as for the same services in relation to conveyances; and to the judge of probate, auditing any settlement under section 1405, five dollars a day.

CHAPTER II.

FOR THE CONSTRUCTION OF MACADAMISED, GRADED, TURNPIKE, RAIL OR PLANK ROADS.

SEC.

1424. Mode of creating corporations for such purposes.
1525. 1426. Powers of the corporation; certified articles of the incorporation.
1427. 1428. 1429. Application made to the judge of probate, for authority to locate the road in the county, &c.
1430. Any land holder may oppose the grant of said authority.
1431. 1432. Restrictions of the authority; writ of ad quod damnum.
1433. 1434. 1435. Proceedings under the writ; assessment, &c.
1436. 1437. 1438. Costs of such proceedings.
1439. 1440. 1441. Appeals; how allowed, and effect thereof.
1442. One jury may execute several writs.
1443. Branch roads; when allowed, &c.
1444. Election of directors; their powers, in calling in stock.
1445. Failure to pay instalments forfeits the stock.
1446. Bridges erected and tolls charged.
1447. Towns may convey land for the location, &c.
1448. Roads to be wide enough for vehicles to pass each other, &c.
1449. Tolls; when to be taken; rates how fixed, &c.

SEC.

1450. Exemptions from tolls.
1451. 1452. Rail roads, when to take toll, &c. Rates of toll to be published.
1453. Penalty for avoiding gates, to escape toll.
1454. 1455. 1456. 1457. Election of directors; their powers and term of office; election of president.
1458. Share not voted on, until held for thirty days.
1459. 1560. Capital stock, how increased; office or place of business, and notice.
1461. Process; how served on the corporation.
1462. List of officers, shareholders, and their stock.
1463. Transfers invalid, till entered on the list, &c.
1464. 1565. 1466. Transcripts from such list; their effect, &c.
1467. Penalty for failure to keep such a list, or refusal to allow it to be inspected.
1468. Individual liability of the shareholders.
1469. Directors; when personally liable.
1470. Failure to prosecute the work, forfeits the charter, &c.
1471. Right to amend or repeal, reserved.
1472. Fees of judge of probate, sheriff, clerk and jurors.

Formation of corporation to build roads.

§ 1424. Any number of persons, not less than seven, can be incorporated for the purpose of constructing and building macadamised, graded, turnpike, wooden, rail and plank roads by:

Notice of opening books of subscription.

1. Giving notice of the time and place where books will be opened for subscription, by advertisement for six successive weeks in each county through any part of which such road is intended to pass, and also in a newspaper published in some one of such counties, if there be one, for twenty days; and if not, in the newspaper nearest to the intended line of such road.

Directors, &c., elected on the subscription of $500 per mile.

2. When, after such notice, stock to the amount of at least five hundred dollars for each mile of such road is taken, in good faith, the subscribers, on such notice as they may determine, may elect directors, and the directors, from one of their number, may elect a president.

3. Articles of association must be subscribed by the stockholders, specifying the name of the company, and residence of the stockholders, the capital stock, and the number of shares, the number of shares taken by each stockholder, the number and names of the directors, and the route of the road, designating the counties, towns and villages through which the same will pass, and the estimated length. Articles of association to be signed.

4. Upon the amount of stock being subscribed for each mile of such road, as is herein required, and upon the payment of five per cent. in cash upon the whole amount of stock subscribed, which facts must be certified with the articles of association, and verified by the affidavit of three directors, such articles may be filed in the office of the secretary of state, and thereupon such stockholders, and all other persons who may thereafter become stockholders in such company, are a body corporate, by the name specified in such articles. Payment of five per cent. on the amount subscribed the association is incorporated.

§ 1425. Such corporations may hold property, and convey and transfer the same, borrow money, and do all acts necessary to carry out the objects of their formation. Powers of such corporations.

§ 1426. A copy of the articles of the association, certified by the secretary of state, is presumptive evidence of the incorporation of such company, and of the facts stated in such articles. Certified copy of the articles is evidence of the incorporation.

§ 1427. Such corporation may make application to the court of county commissioners of each county, through which, or any part of which, the intended road will pass, for authority to construct the same in such county. Court of co'y commis'ers may grant authority to construct the road through the county.

§ 1428. The application must state the kind and route of the proposed road, as specified in the articles of association. Character and route of road to be stated

§ 1429. Notice of such application must be given for four successive weeks, by publication in some paper published in the counties in which the same is made; and if in any of such counties there is no paper published, the notice must be posted at the court house door four weeks before the hearing of the same. Notice of the application to be given in each county.

§ 1430. Any person owning real estate in the county in which the application is made, may show cause against such application, and if the court is of opinion that the public interest would be benefitted by constructing such road in or through such county, it must make an order authorizing the construction of the same, on the route proposed; a copy of which order must be recorded in the office of the judge of probate. Any land owner may show cause against the proposed grant. If road benefit the public, authority be granted and order recorded.

§ 1431. No such road must be laid out through any orchard, to the injury or destruction of the fruit trees, or through any garden, dwelling house, or building connected therewith, or any enclosure necessary for the use of such building, without the consent of the owner; nor shall such company bridge any stream navigable by any vessel or steamboats, so as to obstruct the navigation thereof; or any other stream, in any way which will prevent the passage of a raft twenty-five feet in width. Restrictions as to passing through orchards or dwelling house lots. As to bridging navigable streams.

Application for writ to determine the value of right of way and amount of damage.

§ 1432. If the owner of any lands through which the road will pass is a minor, lunatic, feme covert, or, from any cause, is incapable of disposing of the right of way; or in case the owner is unknown, or a non-resident; or in case such company cannot agree with the owner for the right of way, such company may apply to the clerk of the circuit court of the county in which such lands are, for a writ to ascertain the damage to the same, from the construction of the road.

Proceedings under the writ to assess the damages.

§ 1433. Such clerk must thereupon issue a writ directing the sheriff to summon a jury of five disinterested resident freeholders of the county, who must take an oath, which may be administered by one to the other, that they will inquire into, and, to the best of their judgment, assess the damages which the owner of such land will sustain by the construction of the road, taking into consideration the benefits to such land resulting from such construction, which assessment must be reduced to writing, subscribed by a majority of such freeholders, and delivered to the sheriff, by whom it must be returned to the clerk.

Assessment to be returned and recorded. Payment of damages vests the right of way.

§ 1434. Upon the return of such assessment to the clerk, he must record the same, and on payment of the damages assessed to such clerk, for the use of the party entitled thereto, and costs, the right of way over such lands vests in such company.

If damages have been tendered to owner he pays costs.

§ 1435. When the amount of damages assessed is proven to have been tendered to the owner of the lands, being able to dispose of the right of way, the same must be certified, and in such case such owner must pay the costs, for which the clerk may issue execution.

And if the jury find the road to be of no injury to him he pays the costs.

§ 1436. When the jury find that no damages will result to the owner from the construction of the road, and he is a resident being able to dispose of the right of way; and proof is also made that he has been applied to for such right of way, upon these facts being certified by the jury, such owner must pay the costs, for which execution may issue.

Executions for costs.

§ 1437. Executions for costs, under the two last sections, are returnable to the next circuit court.

Appeals allowed to circuit court.

§ 1438. Either party may appeal to the next circuit court, within thirty days after the return of the assessment, by application to the clerk of such court, and giving security for the prosecution of such appeal.

Appeals to be tried "de novo." Costs; how apportioned.

§ 1439. The trial of such appeal is de novo, and damages must be assessed by a jury, on the demand of either party; the judgment is final if for less than five hundred dollars, and if against the appellant, the costs must be apportioned, at the discretion of the court; and for such judgment as is rendered against the appellant, execution may issue against his securities.

Taking an appeal does not suspend operations on the land.

§ 1440. The taking of an appeal does not suspend the operations of the company upon the land; but in case the judgment on appeal is against such company, and the exe-

cution not suspended, if the amount of the same is not paid within thirty days after the adjournment of the court, an execution may, on filing a certified copy of the articles of the association, certified by the secretary of state, issue against the stockholders therein specified, jointly and severally, not exceeding the amount of their stock, until the judgment and costs is satisfied.

Execution after judgment on the appeal.

§ 1441. No appeal must be tried the first court, unless the adverse party has had ten days' notice of the same in writing.

Notice given or appeal not tried at the first court.

§ 1442. Any number of assessments may be made by the same jury, and included in one certificate, and returned, and appeals may be taken separately on such assessment.

One jury may make several assessments, &c.

§ 1443. Any company formed under the provisions of this chapter, may construct branch or lateral roads, by the consent of the court of county commissioners, of the counties through which the same may pass, and by obtaining the right of way, by purchase, or as herein provided.

Branch roads.

§ 1444. The stockholders may regulate the time, place, and mode of electing directors, creating officers, prescribing their duties, and fixing their compensation; and the board of directors may prescribe the amount of each instalment to be paid on the stock subscribed, and the time and place of its payment.

Time of electing directors and officers.

Powers of directors as to calling in instalments.

§ 1445. If any stockholder fail to pay the instalments as required, his stock may be declared forfeited to the corporation, upon giving thirty days' notice of the same; and if not paid within that time, it may be entered on the books of such corporation as forfeited, and enures to the use and benefit of the company.

Failure to pay forfeits the stock.

§ 1446. Any corporation, formed under the provisions of this chapter, may erect bridges over all streams of water where it is proposed to construct such road, subject to the provisions of section 1431, and may charge reasonable tolls for persons and property passing thereon.

Bridges may be erected and tolls charged.

§ 1447. The corporate authorities of any city or town may convey to such corporation any lots or portion of land within their corporate limits, for the location or construction of such road, the rights of private property being secured, according to the intent of the preceding sections of this chapter.

Cities and towns may convey lots for the location of the road.

§ 1448. All macadamised, graded, turnpike, or plank roads constructed under the provisions of this chapter, must be so constructed as to allow carriages, and other vehicles, conveniently to pass each other, and to pass on and off where any such road intersects another road.

Roads to be constructed so as to admit carriages to pass each other, &c.

§ 1449. On the completion of three miles or more of any such road, the company may charge tolls, which must be regulated and defined by the board of directors; and such company may also erect gates, and suitable buildings for the toll keepers.

Tolls; when charged. Rates; how fixed.

§ 1450. No toll must be claimed or taken on any such macadamised, graded, turnpike or plank road, from any person passing from one part of his farm or plantation to another

Certain persons and property exempt from toll.

part of the same, or for the property of such person at the gate nearest his residence, or from persons going to or from funerals or places of religious worship, or to or from militia musters, if required to do militia duty; or to or from elections, at which such person is authorized to vote; or from any person travelling on foot, or going to or from any grist mill, with grain for family use; or to or from a blacksmith's shop for work; or going for a physician and returning; or from any one residing within one mile of the gate where such toll is demanded.

On the completion of any part of a rail road tolls taken.

§ 1451. After the completion of any rail road under this act, or any portion thereof, tolls may be charged for the transportation of persons or property.

Rates of toll to be published, &c.

§ 1452. The rates of toll on any road, constructed under the provisions of this chapter, must be made public; and in no case can be increased, except at annual meetings of the stockholders.

Penalty for passing around gates to avoid paying toll.

§ 1453. If any person turns off any macadamised, graded, turnpike, or plank road constructed under this chapter, or passes any gate thereon, or ground adjacent thereto, and again on such road to continue his route, with the intent to avoid the payment of toll, such person forfeits to such company ten dollars, to be recovered before any justice of the county.

Directors manage the business.

§ 1454. The business of such corporation is managed by the directors, not less than five in number; who, after the first year, are elected at such time and place as the stockholders prescribe, not less than twenty days' notice of such election being given.

Notice of election of directors to be given.

Votes to be by ballot, each share one vote.

§ 1455. All elections are by ballot, each shareholder being entitled, in person or by proxy, to one vote for each share of stock.

President to be elected by directors; vacancy filled by directors.

§ 1456. The directors, at their first meeting after their election, must elect one of their own number president, and vacancies in the board of directors may be filled by the other directors.

Term of office of directors.

§ 1457. Directors hold office for one year, and until their successors are elected and enter upon the discharge of their duties.

No share voted on till held for thirty days; director to be a stockholder.

§ 1458. No stockholder can vote at any election for directors, except on such stock as he has held thirty days next before such election, and no one can be a director unless he is a stockholder.

Capital stock may be increased.

§ 1459. The directors in any such company, with the consent of the stockholders representing a majority of the shares, may increase the capital stock to the amount necessary to complete a road already commenced.

Office to be located and notice given, &c.

§ 1460. Within forty days after the formation of the company, the directors must designate some place within a county through which the road, or some part thereof, is to be constructed, where the office of the company is to be kept, which must be recorded in the office of the judge of probate of such county, and published in the nearest newspaper once a week for six consecutive weeks.

§ 1461. All legal process may be served on such company, by leaving the same at such office, with any person in charge of the same, on any day except Sunday. Process served by being left at the office.

§ 1462. Such company must cause a book to be kept containing, in alphabetical order, the names of the president and directors, the names of all persons who are, or within six years have been stockholders; the number of shares held by each, with the time when each became the holder of the stock; which book must be free for the inspection of all persons, on at least six hours of each day, except Sunday, at such office. List of directors and shareholders kept at the office for inspection.

§ 1463. No transfer of stock is valid for any other purpose than to render the person accepting such tranfer liable for the debts of the company, according to the provisions of this chapter, until it has been entered on such book, showing when the transfer was made, by and to whom. Transfers of stock invalid until entered on the book.

§ 1464. Every person may obtain a transcript from such book, on application to the president, or any director or officer of the corporation, on attending at the office of the company, and tendering the fees for transcribing the same, at the rate of twelve and one half cents per hundred words; and the officer must certify that such transcript is correct. Transcripts from the books given on application and payment of fees.

§ 1465. Any officer failing to comply with the provisions of the preceding section for five days after the demand is made, and a sufficient tender to cover the fees, forfeits the sum of two hundred dollars. Penalty for refusal to give a transcript.

§ 1466. Such book, or a transcript therefrom, certified according to the provisions of section 1464, is presumptive evidence for the plaintiff in any suit or proceeding against such corporation, or any one or more of the stockholders. Transcripts evidence for certain purposes.

§ 1467. Every officer who neglects or refuses to allow such book to be inspected, or exhibit the same, as in this chapter is provided, forfeits to the person demanding an inspection of the same, the sum of two hundred dollars, and is also guilty of a misdemeanor; and any company failing to keep such book, and to make the entries therein, as required by section 1462, forfeits its charter. Penalty for refusal to allow inspection of the stock book. Penalty for neglect to keep such book.

§ 1468. The stockholders of every corporation, created under the provisions of this chapter, are liable, in their individual capacity, for the payment of the debts of such corporation, to an amount equal to, and exclusive of the stock held by them respectively, recoverable of any one being a stockholder when the debt is contracted, or of the assignee or transferee of any such stock; and any stockholder paying any demand against such corporation, has a right of action against any of the stockholders liable to contribution, and the dissolution of such corporation does not affect the liability of any stockholder for debts contracted before such dissolution. Liability of the stockholders. Dissolution of corporation does not discharge the stockholders.

§ 1469. The debts and liabilities of any corporation formed under the provisions of this chapter, must not exceed in amount, at any one time, fifty per cent. of the amount of its Indebtedness not to exceed one half of the amount

of the stock, if so the directors are liable personally.

capital actually paid in, and if such debts and liabilities at any time exceed such amount, the directors who were such at the time such excess of debt was created, are jointly and severally liable for such excess, unless it is shown that they voted against the contracting of such debt or liability.

On failure to prosecute the work to a certain extent the charter is forfeited.

§ 1470. Every company formed under the provisions of this chapter ceases to be a body corporate, if within two years from the filing of their articles of association they have not commenced the construction of their road, and actually, and in good faith, expended thereon at least ten per cent. on the amount of their capital stock; and if within four years from such filing they have not, in like manner, expended twenty per cent. of such capital stock; and for a failure to expend in the same rate for every two successive years, until the road is completed.

This act may be repealed or modified under certain restrictions.

§ 1471. The general assembly may at any time alter or repeal any of the provisions of this chapter, or annul any power granted to any corporation under its provisions, or dissolve such corporation; but in all cases in which this power is exercised, it is void as to corporations created under this chapter, unless such act effectually secures to such corporation all costs and expenses actually incurred.

Fees of the judge of probate, clerk of circuit court, sheriff and juries.

§ 1472. The judge of probate is entitled to two dollars for the hearing of each application, and the clerk of the circuit court to three dollars for the issue of each writ to ascertain damages, and recording the same under the provisions of this chapter. The sheriff, for summoning a jury and returning the writ and assessment, five dollars, and each juror to two dollars a day.

CHAPTER III.

OF THE INCORPORATION OF COMPANIES FOR MINING, QUARRYING, AND MANUFACTURING PURPOSES.

Sec.		Sec.	
1473.	Mode of forming such corporations, and their powers.	1478.	Liability of shareholders on a dissolution.
1474.		1479.	Certified transcript, evidence of the corporation.
1475.		1480.	Fee for recording the declarations, &c.
1476.	Shares, how transferred, and voted on.		
1477.	Amount of capital stock limited; duration limited.		

Declaration in writing.

§ 1473. Where two or more persons are desirous of engaging in any manufacturing, mining, or quarrying business, and of becoming incorporated, such persons must make a declaration in writing, stating:

Name of company; its objects.

1. The name of the company, and the object for which it is formed.

2. The amount of capital stock, and the number of shares into which the same is divided. Amount of stock, &c.

3. The names of the stockholders, and the number of shares held by each. Stock list.

§ 1474. This declaration, signed by the stockholders, and acknowledged before any officer authorized to take the acknowledgment of deeds, must be recorded in the office of the judge of probate of the county or counties in which such business is to be carried on. Declaration to be signed, acknowledged and recorded.

§ 1475. Upon the filing and recording of such declaration, the persons who have signed and acknowledged the same, and their successors, become a body corporate, by the name stated therein, and with the powers conferred on private corporations by this code. On filing the declaration company is incorporated. Its powers.

§ 1476. All shares are transferrable on the books of the company, and in all votes to be given by the stockholders, each share is entitled to one vote. Shares transferrable on books, and each share represented by a vote.

§ 1477. The capital stock of any company, incorporated under the provisions of this chapter, cannot exceed two hundred thousand dollars; and no such corporation shall continue for a longer term than twenty years, unless renewed according to the provisions thereof, within one year before the expiration of its term. Amount of capital stock limited. Duration of the corporation limited.

§ 1478. The stockholders of any such corporation are liable for all debts due by it, at the time of its dissolution, to the extent of their stock. Liability of stockholders on a dissolution.

§ 1479. A copy of the declaration recorded according to the provisions of this chapter, duly certified by the judge of probate in whose office the same is recorded, is evidence of the incorporation, and also presumptive evidence, in any action brought against such corporation, of the facts stated therein. Copy of the declaration evidence of incorporation.

§ 1480. The officers taking the acknowledgment of the declaration, are entitled to the same fees as in the case of deeds, and the judge of probate, for recording the same, to the same fees allowed for the recording of deeds. Fee for taking acknowledgment and recording the declaration.

CHAPTER IV.

GENERAL PROVISIONS IN RELATION TO PRIVATE CORPORATIONS.

Sec.	
1481.	Powers of private corporations.
1482.	These powers vest, in all private corporations.
1483.	No other powers to be exercised, unless expressly granted.
1484.	Limitation, as to banking privileges.
1485.	Liability of stockholders, for stock not paid up.
1486.	Majority of the board exercise the corporate powers.
1487.	Failure to organize for two years forfeits the charter.
1488.	Failure to elect officers does not dissolve the corporation.
1489.	Powers extended five years after dissolution, to settle their affairs.
1490.	Administration of its affairs on dissolution.
1491. 1492.	Authority of such officers; time of settling up, how extended.

Powers of private corporations.

§ 1481. Every private corporation as such has power:

1. To have succession by its corporate name, for the period limited in its charter, and when no period is limited, perpetually.

2. To sue and be sued.

3. To use a common seal, and to alter the same at pleasure.

4. To hold, purchase, dispose of, and convey, such real and personal estate as is limited by its charter; and if not so limited, such an amount as the business of the corporation requires.

5. To appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties, and fix their compensation.

6. To make by-laws, not inconsistent with any existing law, for the transfer of its stock, the management of its property, or the regulation of its affairs.

These powers vest although not specified in the charter.

§ 1482. The powers enumerated in the preceding section vest in every private corporation hereinafter created, although not specified in its charter, or in the act under which it is incorporated.

No other power to be exercised, &c.

§ 1483. In addition to the powers enumerated in section 1481, and to those expressly given in its charter, no private corporation possesses, or can exercise any corporate powers, except those necessary to the exercise of the powers thus given.

Certain powers not to be exercised unless expressly granted.

§ 1484. No private corporation, to which such powers are not expressly given, shall, by any implication, or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt; of receiving deposits, of buying and selling gold, silver, bullion, or foreign coin; or of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money.

Liability of stockholders who have not paid in whole amount due on their stock.

§ 1485. Where the whole capital of a private corporation has not been paid in, and the capital paid and property belonging to such corporation is not sufficient to satisfy the claims of its creditors, each stockholder is bound to pay on each share held by him, the sum necessary to complete the amount of such share, or such proportion of that sum, as is necessary to satisfy the debts of the corporation.

Majority of board may exercise the powers of the board.

§ 1486. Where the corporate powers are directed to be exercised by any particular body, or number of persons, a majority of such body or persons, unless it is otherwise provided, form a board for the exercise of such powers.

When private corporation is not organized within two years, powers cease.

§ 1487. If any private corporation hereafter created by the general assembly, or incorporated under any law, does not organize and commence the transaction of its business within two years from the date of its incorporation, its corporate powers cease.

Corporation not dissolved by failure to elect officers.

§ 1488. A failure to elect officers at the proper time, does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.

On dissolution, powers continue five years, to settle up business.

§ 1489. All such corporations, whose charters expire by their own limitation, or are annulled by forfeiture, or dissolved for any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, by or against them; settling their business, disposing of their property and dividing their capital stock; but not for the purpose of continuing the business for which they have been or may be established.

Administration of the affairs of a corporation on a dissolution; by whom conducted.

§ 1490. Upon the dissolution of any such corporation in existence, or hereafter created, unless other persons are appointed by the general assembly, or by a court of competent authority, the managers of the business of such corporation, at the time of its dissolution, by whatever name known, are the trustees of the stockholders and creditors, and are authorized to settle the affairs of the corporation, dispose of such property as is necessary to pay its debts, and divide among the stockholders the money and property remaining, after the payment of such debts and the necessary expenses.

Authority of such officers; their liability

§ 1491. Such persons have authority to sue for and recover the debts and property of such dissolved corporation, in its corporate name; and are jointly and severally responsible to its creditors, to the extent of the property which may come into their hands.

Chancellors may extend the time for settling up business.

§ 1492. On application to the chancellor, and making a proper case, the power of such trustee, or any person appointed receiver of such dissolved corporation, may be continued for such length of time beyond such five years, as the chancellor may judge necessary, for the purposes contemplated in the three preceding sections.

Title 3.

REGULATIONS OF TRADE AND COMMERCE.

CHAP. 1. Limited partnership.
" 2. Interest.
" 3. Negotiable instruments.
" 4. Of void contracts.

CHAPTER I.

LIMITED PARTNERSHIPS.

SEC.
1493. For what purpose formed, &c.
1494. Liability of general and special partners, respectively.
1495. General partners, alone manage the partnership business.
1496. Proceedings to form limited partnerships.
SEC.
1497. } Certificate to be acknowledged;
1498. } where recorded.
1499. Affidavit of payment of the capital of the special partner.
1500 Partnership not complete, until affidavit is filed.

SEC.
1501. All liable as general partners for false certificate or affidavit.
1502. Publication of limited partnership.
1503. Printers' affidavit when filed, proves the publication.
1504. Renewals made as the first are formed.
1505. A limited partnership, becomes a general partnership, by any alteration.
1506. The use of the special partner's name, makes him a general partner.
1507. The general partner prosecutes and defends suits.
1508. Special partner can only withdraw interest and profits.
1509. If the capital is thus reduced, he must restore it.
1510. The special partner may examine into the business, &c., but cannot interfere in the managment.
1511. General partners liable to account as other partners.
1512. Partners guilty of a fraud, liable for the injury.
1513. On insolvency, no preference to be given by assignment, &c.
1514. Such assignment, &c., void as to creditors.
1515. Special partners become general partners by the commission of such acts.
1516. Special partners cannot claim as creditors on the insolvency of the concern.
1517. Dissolution only made after four weeks' notice.
1518. Fee of the judge of probate, for his services.

Limited partnerships may be formed for certain purposet.

§ 1493. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, and with the rights and powers, and subject to the conditions and liabilities in this chapter; but its provisions must not be construed to authorise any such partnership for the purpose of banking, or insurance business.

Consist of special and general partners.

§ 1494. Such partnerships may consist of one or more persons, who are general partners, and are, jointly and severally, responsible as general partners now are by law; and of one or more persons, who contribute, in actual cash payments, a specific sum as capital to the common stock, who are called special partners, and who are not liable for the debts of the partnership, beyond the funds so contributed to the capital.

The general partners only can transact business.

§ 1495. The general partners, only, are authorized to transact business, sign for the partnership, and to bind the same.

Proceedings to form limited partnerships.

§ 1496. The persons desirous of forming such partnership must make and severally sign a certificate containing:

1. The name or firm nnder which such partnership is to be conducted.

2. The general notice of the business to be transacted.

3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital which each special partner has contributed to the common stock.

5. The period at which such partnership is to commence and terminate.

Certificate to be acknowledged before certain officers.

§ 1497. The certificate must be acknowledged by the several persons signing the same, before a judge of the supreme or circuit court, or judge of probate, who must endorse such acknowledgment and sign the same.

§ 1498. The certificate and acknowledgment must be filed in the office of the judge of probate of the county in which the principal place of business of such partnership is situated, and must be by such judge recorded in a book kept for that purpose, free to inspection. If the partnership has places of business in different counties, a transcript of the certificate and acknowledgment, certified by the judge of probate, in whose office it is filed, must be filed and recorded in the office of the judge of probate of every such county.

Certificate to be filed with the judge of probate and recorded.

Recorded in all the counties where the business to be conducted.

§ 1499. At the time of filing the original certificate and acknowledgment, an affidavit of one or more of the general partners must also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special copartners to the common stock, have been actually and in good faith paid in cash.

General partner to make and file an affidavit of payment of the capital by special partners.

§ 1500. No such partnership shall be deemed to have been formed until such certificate has been made, acknowledged, filed, and recorded; nor until the affidavit required by the preceding section has been made and filed.

Limited partnership; when considered complete.

§ 1501. If any false statement is made in such certificate, or affidavit, all the persons interested in such partnership are liable for all the engagements as general partners.

If false statement is made, all liable as general partners.

§ 1502. The terms of the partnership must be published immediately after the recording, for six successive weeks, in two papers designated by the judge of probate, in whose office the certificate is recorded; and if such publication is not made, the partnership shall be deemed general.

Terms of partnership to be published in two newspapers.

§ 1503. Affidavits of such publication, by the printers of the newspapers in which the same is published, may be filed with the judge of probate, and are evidence of the fact.

Affidavits of the printers evidence of the publication.

§ 1504. Every renewal, or continuance of such partnership, beyond the time originally fixed for its duration, must be certified, acknowledged, recorded, and an affidavit of a general partner made and filed, and notice given, by publication, as required for its original formation; and every such partnership, which is otherwise renewed, or continued, must be deemed a general copartnership.

Renewals to be made as the first partnerships were formed.

§ 1505. Every alteration which is made in the names of the partners; in the nature of the business; or in the capital, or shares thereof; or in any other matter specified in the original certificate, must be deemed a dissolution of the partnership; and every such partnership which is in any manner carried on after such alteration has been made, must be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the preceding section.

Alterations dissolve the partnership, and make it an ordinary partnership, &c.

§ 1506. The business of the partnership must be conducted under a firm, in which the names of the general partners only are inserted, without the addition of the word "company," or any other general term; and if the name of any special partner is used in the firm, with his privity, he shall be deemed a general partner.

If the name of a special partner is used in the firm, he becomes a general partner.

Suits to be prosecuted by or against the general partner.

§ 1507. Suits in relation to the business of the partnership may be brought and conducted by, and against the general partner, in the same manner as if there were no special partners.

Capital contributed by a special partner cannot be withdrawn.

§ 1508. No part of the sum which any special partner has contributed to the capital stock must be withdrawn, or paid to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if after the payment of such interest, any profits remain to be divided, he may also receive his proportion of such profits.

Special partner may receive lawful interest, and any profits not reducing the capital.

If the capital is so reduced the special partner is liable to the extent of the reduction.

§ 1509. If it appears that by the payment of interest, or profits, to any special partner, the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital without interest.

Special partner may examine into and advise as to the business, or act as attorney at law, but cannot interfere otherwise.

§ 1510. A special partner may, from time to time, examine into the state and progress of the partnership concerns; may advise as to their management, and act as attorney at law; but must not transact any other business, nor be employed for that purpose as agent, or otherwise; and if he interfere contrary to the provisions of this section, he is deemed a general partner.

General partners liable to account, &c.

§ 1511. The general partners are liable to account to each other, and to the special partners, for their management of the partnership, both in law and equity, as other partners.

Partner guilty of a fraud is liable for the injury caused.

§ 1512. Every partner who is guilty of any fraud in the affairs of the partnership, is liable civilly to the party injured, to the extent of the damage; and is also guilty of a misdemeanor.

When limited partnerships become insolvent no preference to be made among creditors by assignment, &c.

§ 1513. Every sale, assignment, or transfer, of any of the property or effects of such partnership, made by such partnership, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership; and every judgment suffered, lien, credit, or security given by such partnership, under like circumstances, and with the like intent, is void, as against the creditors of the partnership.

Such sales, assignment, &c., by either party void as to the creditors of the partnership.

§ 1514. Every such sale, assignment, or transfer of any of the property, or effects of a general or special partner, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership a preference over creditors of the partnership, and any judgment suffered, lien created, or security given, by any such partner under the like circumstances, and with the like intent, is void as against the creditors of the partnership.

§ 1515. Every special partner who violates any provision of the two preceding sections, or who concurs in, or assents to, any such violation by the partnership, or by any individual person, is liable as a general partner. Special partners concerned in the violation of above rule liable as general partners.

§ 1516. In case of the bankruptcy or insolvency of the partnership, no special partner is under any circumstances to be allowed to claim as a creditor, until the claims of all the other creditors of the partnership are satisfied. In case of insolvency a special partner cannot claim as a creditor, &c.

§ 1517. No dissolution of such partnership, by the acts of the parties, must take place before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution has been filed and recorded in the office of the judge of probate, in which the original certificate was recorded; and published once a week for four successive weeks in a newspaper published in each of the counties where the partnership has places of business; and if there is any county in which the partnership has a place of business in which no newspaper is published, then in a paper published the nearest thereto. No dissolution takes effect until notice is filed and published for four weeks.

§ 1518. The judge of probate is entitled to the following fees for services rendered under this chapter: For each acknowledgment, fifty cents; for filing and recording the original certificate and acknowledgment, and each transcript of the same, one dollar; for each affidavit, twenty-five cents; for making out transcript and certifying the same, fifty cents; and the same fees on the renewal or continuance of the partnership. Fees of the judge of probate.

CHAPTER II.

INTEREST.

Sec.	
1519.	Rate of interest fixed at eight per cent.
1520.	Interest accrues on breach of a contract.
1521. 1522.	Interest on judgments; partial payments applied to interest.
1523.	Interest on usurious contracts cannot be collected; and if paid, to be deducted from the principal due.
1524.	Interest at one hundred per cent. on notes and change bills of one dollar or less.

§ 1519. The rate of interest upon the loan, or forbearance of money, goods, or things in action, is eight dollars upon one hundred dollars for one year; and at that rate for a greater or less sum, or a longer or shorter time. Rate of interest fixed at eight per cent.

§ 1520. All contracts, express or implied, for the payment of money or other thing, or for the performance of any act or duty, bear interest from the day such money or thing, estimating it at its money value, should have been paid, or such act, estimating the compensation therefor in money, performed. Interest accrues on breach of contract.

Interest on judgments and decrees.

§ 1521. Judgments and decrees for the payment of money, other than costs, bear interest from the day of rendition.

Partial payments applied to the interest.

§ 1522. When partial payments are made, the interest due is first to be paid, and the balance applied to the payment of the principal.

Usurious contracts not to be enforced as to the interest.

If interest has been paid it is deducted from the principal.

§ 1523. All contracts for the payment of interest upon the loan or forbearance of goods, money, things in action, or upon any contract whatever, at a higher rate than is prescribed in this chapter, are usurious, and cannot be enforced, except as to the principal; and if any interest has been paid, the same must be deducted from the principal, and judgment rendered for the balance only.

Interest of one hundred per cent. on notes and change bills for one dollar or less.

§ 1524. All change bills and notes, for a sum not exceeding one dollar, issued or circulated in this state, without authority of law, bear interest at the rate of one hundred per cent. per annum, from the day of their date, or time of issue or circulation; and may be sued by the holder thereof, without regard to the person to whom the same are payable, and a recovery had against the person issuing or giving circulation to the same.

CHAPTER III.

NEGOTIABLE INSTRUMENTS.

Sec.		Sec.	
1525.	Bills and notes payable at a banker's, or private banking houses, are negotiable instruments.	1537.	Damages on inland and foreign bills, for non-payment.
1526.	Other instruments also, as to grace, protest, and notice.	1538.	Damages include all charges but interest and protest fees.
1527.	No grace or notice required on other contracts.	1539.	When bill is payable in our currency, damages cover the exchange.
1528.	Paper due on Christmas, fourth of July, and first of January, to be paid the day previous.	1540.	When payable in other currency, the exchange is added.
1529.	Payment to whom made, if paper payable to a fictitious person, or to bearer.	1541.	Damages and charges on protest, for non-acceptance.
1530.	Contracts in writing assignable by indorsement.	1542.	Notice of protest, where sent, &c.
1531.	But sets-off against the payer good until notice.	1143.	Maker of notes not negotiable, over fifty dollars, to be sued to first court, to charge the indorser.
1532. 1533.	Acceptances to be written; promises in writing amount to acceptances.	1544.	Notes of less than fifty dollars to be sued in thirty days.
1534.	Bills to be accepted on the paper.	1545.	Suit may be waived by written consent.
1535.	Damages for breach of promise to accept a bill, though not written.	1546.	Excuses for not suing, obtaining judgment, &c.
1536.	Retaining the bill more than twenty-four hours is an acceptance.	1547.	Irregular indorsements or assignments require suit, &c.
		1548.	The assignor pays the costs of suit against the maker.
		1549.	Inland and foreign bills defined.

Bills of exchange and notes paya-

§ 1525. Bills of exchange and promissory notes payable in money at a bank or private banking house, are governed

by the commercial law, except so far as the same is changed by this code. ble at a bank governed by the commercial law.

§ 1526. All other instruments payable in money, at a bank or private banking house, are governed by the commercial law, as to days of grace, protest, and notice. Other instruments for payment of money, &c.

§ 1527. No days of grace are allowed on any contracts, except those enumerated in the two preceding sections. No grace allowed on other contracts.

§ 1528. If any paper payable in this state, entitled to grace, by the allowance thereof, becomes due on Christmas, the fourth day of July, or the first day of January, such paper is due on the day previous to such day, unless such previous day is Sunday, in which case it is due on the Saturday preceding. Paper due on Christmas day, 4th July and 1st January, to be paid on day before.

§ 1529. All bonds, bills, or notes, except those issued to circulate as money, payable to any thing or bearer; to any fictitious person or bearer; or to bearer only, must be construed as payable to the person from whom the consideration moved; if payable to an existing person or bearer, must be construed as if payable to such person or order. Paper payable to a fictitious person or bearer; to whom to be paid.

§ 1530. All bonds, contracts, and writings for the payment of money, or other thing; or the performance of any act or duty, are assignable by indorsement, so as to authorize an action thereon by each successive indorsee. All contracts in writing assignable by indorsement.

§ 1531. All contracts and writings, except bills of exchange, promissory notes payable in money at a bank or private banking house, and paper issued to circulate as money, are subject to all payments, sets-off, and discounts, had or possessed against the same previous to notice of the assignment or transfer. Right of set-off until notice of assignment. Negotiable paper excepted.

§ 1532. No person within this state must be charged as the acceptor of a bill of exchange, unless his acceptance is in writing, signed by himself or agent. Acceptance of bills to be in writing.

§ 1533. An unconditional promise in writing, to accept a bill before it is drawn, amounts to an actual acceptance. A promise in writing to accept amounts to an acceptance.

§ 1534. Every holder of a bill presenting the same for acceptance, may require that the acceptance be written on the bill; and a refusal so to do, is a refusal to accept, and the bill may be protested for non-acceptance. A bill may be protested if not accepted.

§ 1535. The three last sections must not be construed to impair the right of any person to whom a promise to accept a bill has been made, and who, on the faith of such promise, has negotiated the bill, to recover damages of the person making such promise, on his refusal to accept such bill. Damages for breach of promise to accept a bill loan if not written.

§ 1536. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who refuses, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, must be deemed to have accepted the same. On the delivery of a bill for acceptance, retaining it for longer than twenty-four hours is an acceptance.

§ 1537. The damages on inland bills of exchange, protested for non-payment, are ten per cent.; and on foreign bills of exchange, protested for non-payment, fifteen per cent. on the sum drawn for. Damages on inland and foreign bills for nonpayment.

Damages include all charges except cost of protest and interest.

§ 1538. Such damages are in the place of all charges, except costs of protest incurred previous to, and at the time of giving notice of non-payment; but the holder may recover legal interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which payment of the principal sum has been demanded, and costs of protest.

Damages cover the rate of exchange; when payable in United States money.

§ 1539. If the amount in such bill specified is expressed in money of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, must be ascertained without reference to the rate of exchange between this state, and the place on which such bill was drawn, at the time of the demand of payment, or notice of non-payment.

Bills payable in foreign currency have the exchange added.

§ 1540. If the amount in such bill specified is expressed in the money or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, must be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of the demand of payment.

Damages on protest for non-acceptance.

§ 1541. Where a bill of exchange is protested for non-acceptance, the same rate of damages is allowed as in the case of a protest for non-payment; and such damages are in the place of all charges, except costs of protest incurred previous to, and at the time of giving notice of non-acceptance; but the holder is entitled to recover legal interest, exclusive of the damages, upon the amount of the principal sum, from the time when the same would have become payable, if accepted; interest on the damages from the demand of acceptance, and costs of protest.

Notice of protest to post office of the the party at the time of making or indorsing the bill.

§ 1542. In all cases where notice of the non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, is given by sending the same by mail, it is sufficient if such notice is directed to the place where the person sought to be charged by such notice resided at the time of drawing, making, or indorsing such bill, note, or negotiable instrument; or to the post office nearest his residence at that time, unless at the time of affixing his signature to such bill, note, or instrument, he specifies thereon the post office to which he requires the notice to be addressed.

Exception.

Notes, &c., issued over fifty dollars, except negotiable paper, to be sued to first court in order to charge indorser.

§ 1543. On all contracts assigned by writing, except bills of exchange, or other instruments, and notes payable in money, at a bank, or private banking house, when the amount due is over fifty dollars, to charge the indorser, or assignor, suit must be brought against the maker in the county of his residence, to the first court to which suit can properly be brought, after making the indorsement or assignment; and if judgment is obtained, execution must be issued, returnable to the next court thereafter, and his inability to answer such judgment, proved by the return of "no property."

Notes, &c., assigned if less than fifty dollars, to be sued in thirty days after due, or assigned, &c., in order to charge the indorser.

§ 1544. To charge an indorser or assignor on such contracts, when the sum due does not exceed fifty dollars, suit must be brought against the maker within thirty days after such contract is due, or payable; or if assigned, or indorsed after the same is due, within thirty days after such assignment or indorsement is made; and on obtaining judgment, an execution must issue returnable within thirty days thereafter; and the inability of such maker to pay such judgment proved, as in the preceding section.

The indorser may waive the suit, in writing.

§ 1545. The time for bringing the suit, as required by the two preceding sections, may be extended, or waived, by the consent of the indorser or assignor, in writing, signed by him.

Excuses for not bringing suit, obtaining judgment or issuing execution.

§ 1546. The holder of such indorsed or assigned contract is excused from bringing the suit, obtaining the judgment, and issuing the execution thereon:

1. When the maker has no known place of residence in the state.

2. When, by the use of ordinary diligence, such residence cannot be ascertained.

3. When a suit has been commenced in the county of the residence of the maker, and a summons to the first and next succeeding court returned "not found," by the proper officer.

4. When a judgment against the maker has been defeated in whole, or in part, by a defence to the merits of such contract, or writing; or a set-off against any other than the indorsee or assignee.

5. When any defence except a set-off to the merits of such contract, or writing, exists, which would prevent a judgment for all, or any portion of the sum due; or the value of the thing payable by such contract or writing,

6. When the maker dies before the time expires for bringing suit, or if after suit brought his estate is declared insolvent.

Irregular assignments, &c., to be construed as requiring suits, &c.

§ 1547. All assignments, or indorsements in writing, of the contracts embraced by the provisions of sections 1543 and 1544, whether regular or irregular, must be construed as within the meaning of the last four sections, unless the contrary clearly appear, from such assignment or indorsement.

Assignor or indorser pays costs of suit.

§ 1548. The costs in the suit, against the maker of such assigned or indorsed contract, are recoverable in the suit against the assignor or indorser.

Inland and foreign bills defined.

§ 1549. All bills drawn and payable within this state, are inland bills; and those drawn in this state and payable elsewhere, are foreign bills, within the meaning of this chapter.

CHAPTER IV.

OF VOID CONTRACTS.

ARTICLE 1. Of the prevention of frauds and perjuries.
" 2. Of contracts in consideration of not bidding for public lands.
" 3. Gambling and wagering contracts.
" 4. Contracts made on Sunday.

ARTICLE I.

Of the prevention of frauds and perjuries.

SEC.
1550. Conveyances, &c., of personal property in trust for the grantor are void as to his creditors.
1551. Certain contracts, &c., to be in writing; else void.
1552. Auctioneer's written memorandum sufficient.
1553. Representations of another's credit, &c., to be in writing, or else not actionable.
SEC.
1554. All instruments made to hinder, delay, or defraud creditors, &c., void as to creditors, &c.
1555. Mortgages, &c., void as to creditors, if the grantor reserve a benefit.
1556. General assignments; enure equally to all creditors.

Conveyances, &c., of personal property, in trust for the grantor, verbal and written are void as to his creditors.

§ 1550. All deeds of gift, all conveyances, transfers, and assignments, verbal, or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, are void against creditors existing, or subsequent, of such person.

Certain agreements void if not in writing, &c.

7 Port. 73; 16 Ala., 204.

7 Ala., 161.

§ 1551. In the following cases, every agreement is void, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party to be charged therewith, or some other person by him thereunto lawfully authorized in writing.

1. Every agreement which, by its terms, is not to be performed within one year from the making thereof.

2. Every special promise, by an executor, or administrator, to answer damages out of his own estate,

6 Ala., 415. 4 Ala., 230, 390; 6 Ala., 594; 10 Ala., 50, 140; 11 Ala., 259; 12 Ala., 569; 14 Ala., 590, 611; 16 Ala., 117.

3. Every special promise to answer for the debt, default, or miscarriage of another.

4. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

5. Every contract for the sale of goods, chattels, or things in action, for a price exceeding two hundred dollars, unless the buyer accepts and receives part of such goods and chattels, or the evidences, or some of them, of such things in action; or unless the buyer, at the time, pay some part of the purchase money.

6 Ala., 531; 8 Ala., 546, 948; 9 Ala., 269, 755; 12 Ala., 371; 15 Ala., 276.

6. Every contract for the sale of lands, tenements, or hereditaments, or of any interest therein, except leases for a term not longer than one year, unless the purchase money, or a portion thereof, be paid, and the purchaser be put in possession of the land by the seller.

§ 1552. When goods, or things in action, are sold, or lands, tenements, or hereditaments, sold or leased at public auction, and the auctioneer, his clerk or agent, makes a memorandum of the property, and price thereof at which it is sold or leased, the terms of sale, the name of the purchaser, or lessee, and the name of the person on whose account the sale or lease is made, such memorandum is a note of the contract, within the meaning of the preceding section.

Memorandum of sale, &c., made by an auctioneer or his clerk or agent is sufficient.

§ 1553. No action can be maintained to charge any person, by reason of any representation or assurance made, concerning the character, conduct, ability, trade, or dealings of any other person, when such action is brought by the person to whom such representation or assurance was made, unless the same is in writing, signed by the party sought to be charged.

Certain representations to be in writing or no action lies on them.

§ 1554. All conveyances, or assignments in writing, or otherwise, of any estate or interest, in real or personal property; and every charge upon the same, made with intent to hinder, delay, or defraud creditors, purchasers, or other persons, of their lawful suits, damages, forfeitures, debts, or demands; and every bond, or other evidence of debt, given, suit commenced, decree or judgment suffered, with the like intent, against the persons who are or may be so hindered, delayed, or defrauded, their heirs, personal representatives, and assigns, are void.

Conveyances, assignments, bonds, &c., made to hinder, delay or defraud creditors, &c., void as to them.

§ 1555. Every deed of trust, mortgage, or other security, hereinafter made, to secure any preexisting debt, whether such debt is due, or not, or absolute, or conditional, is fraudulent and void, as to the creditors of the grantor, when any creditor provided for thereby is required to make any release, or to do any other act impairing his existing rights, before participating in, or receiving the securities therein provided for him.

Conveyances void as to creditors if any advantage is reserved to the grantor.

§ 1556. Every general assignment, made by a debtor, by which a preference, or priority of payment is given to one or more creditors, over the remaining creditors of the grantor, shall be, and enure, to the benefit of all the creditors of the grantor equally.

General assignments enure to the equal benefit of all creditors.

ARTICLE II.

Of contracts, in consideration of not bidding for public lands.

SEC.
1557. Agreements not to bid, unlawful.
1558. No public land to be bid off under a contract to resell.
1559. Such contracts void; penalty for making them.
1560. A party to the contract is a competent witness, &c.
1561. Improvements on such lands may be sold.

§ 1557. No person must, directly or indirectly, receive any money or thing of value, in consideration of not bidding at any sale of public lands within this state.

Agreements not to bid for public lands unlawful.

No public land to be bid off under a contract to resell.

§ 1558. No person must bid off any of the public lands within this state, under an agreement, previously made, to transfer the same or any part thereof, or interest therein, for a premium or advance to be paid therefor.

Such contract void.

Penalty for violation of this law.

§ 1559. All contracts in violation of the provisions of the two preceding sections, are void; and any person violating such provisions, forfeits double the amount of money or value of the thing received, or agreed to be received, one half to the use of the person suing for the same, the other to the state.

A party to the contract is a competent witness, but then defendant may be sworn.

§ 1560. In any suit to enforce any contract founded on the considerations specified in this article, such consideration may be proven by the party to, or any other person having a knowledge of the same, without regard to such person being a party to, or interested in such suit; unless the person against whom the evidence is offered to be given, denies on oath the truth of what such witness offers to swear.

Improvements on public lands may be sold.

§ 1561. Nothing in the preceding sections of this article must be so construed as to prevent any person who has made improvements on public lands from selling the same, and receiving the purchase money therefor.

ARTICLE III.

Gambling and wagering contracts.

SEC.
1562. Such contracts void, and money, &c., paid, may be recovered.
1563. Any person may recover money, &c., so paid, for the use of the wife or child of the loser.
1564. One judgment bars other suits for the same cause.
1565. The winner may be garnisheed by a creditor, &c.
1566. Garnishment bars another suit.
1567. And a prior judgment bars the garnishment.
1568. The loser is a competent witness, and the defendant may deny the charge on oath.
1569. Evidence then required, as in other suits.
1570. The answers of the parties do not subject them to prosecution, &c.

Gaming contracts void. Money, &c., paid on such contracts may be recovered by action within six months.

§ 1562. All contracts founded, in whole or in part, on a gambling consideration, are void; and any person who has paid any money, or delivered any thing of value, lost upon any game, or wager, may recover such money, thing, or its value, by action commenced within six months from the time of such payment or delivery.

Any person may sue for the use of the wife, child or next of kin of the loser.

§ 1563. Any other person may also recover the amount of such money, thing, or its value, by action commenced within twelve months after the payment or delivery thereof, for the use of the wife; or if no wife, the child, or children; and if no child, or children, the next of kin of the loser.

One judgment is a bar to another suit for the same cause.

§ 1564. A judgment under either of the two preceding sections, for the amount of money paid, thing delivered, or its value, is a good defence to any action brought for such money, thing, or its value, under the provisions of the other section.

§ 1565. Any creditor of such losing party may, at any time within two years from the payment of such money, or delivery of such thing, garnishee the winner, as other debtors are garnisheed upon attachments or upon judgments; and if such garnishee fails to appear, judgment may be rendered against him, as against other garnishees failing to answer; the answer of the garnishee shall not be evidence against him in a criminal prosecution.

The winner may be garnisheed by a creditor within two years.

§ 1566. A judgment recovered by a creditor under the provisions of the preceding section, is a defence to any action brought by any person, under the provisions of sections 1563 and 1564.

Such garnishment bars another suit.

§ 1567. In like manner, a judgment recovered under the provisions of sections 1563, or 1564, is a defence to any proceeding on any garnishment served after the recovery of such judgment; and the court may make any order staying proceedings, as may be necessary to protect the rights of the defendant.

And judgment recovered by the loser or for the use of the wife, &c., bars the garnishment.

§ 1568. In suits brought under the provisions of this article, to enforce any contract alledged by the defendant to be founded, in whole or in part, on a gambling or wagering consideration; or on the trial of a garnishment under the provisions of section 1565, the loser is a competent witness, unless the facts he offers to swear to are denied on oath by the adverse party.

The loser is a competent witness unless the alleged winner deny the facts on oath.

§ 1569. If the adverse party to such suit, or garnishment, is not the winner, and swears that he does not believe the evidence offered, the facts must be proven as in other cases.

Case then to be proved as in other suits

§ 1570. In any action brought under the provisions of this article, either party may be examined, on interrogatories, as in other cases; but the answer of the party cannot be used against him in any criminal prosecution.

Either party may be examined but the answer does not subject him to a prosecution.

ARTICLE IV.

Contracts made on Sunday.

SEC. 1571. Such contracts void, except in case of necessity, or for works of charity.

Contracts made on Sunday are void. 5 Ala., 467; 13 Ala., 390; 10 Ala., 566; 11 Ala., 885; 9 Ala., 198.

§ 1571. All contracts made on Sunday, unless for the advancement of religion, or in the execution, or for the performance of some work of charity, or in case of necessity, are void.

Title 4.

ESTATES OF DECEDENTS.

CHAPTER 1. Descents and distributions.
" 2. Wills.
" 3. The grant of letters testamentary, or of administration.
" 4. Of the removal of, and requiring additional bonds of executors and administrators, and proceedings on the discovery of a will after the grant of letters.
" 5. Collecting the property of the deceased, inventory, appraisement, and return thereof.
" 6. Of the powers and duties of executors and administrators.
" 7. Proceedings as to insolvent estates.
" 8. Sale of lands for distribution.
" 9. Compelling executors and administrators, whose authority has ceased, to make settlements.
" 10. Of the presentation of claims.
" 11. Of appeals.
" 12. Miscellaneous provisions.
" 13. General provisions as to rights and liabilities of executors and administrators.

CHAPTER I.

DESCENTS AND DISTRIBUTIONS.

SEC.
1572. Provisions for descent of real estate.
1573. Lineal descendants take their ancestors' share.
1574. No representation among collaterals; exception.
1575. Degrees of kindred, computed by the civil law.
1576. No discrimination against the half blood; exception.
1577. Posthumous children, inherit as others.
1578, 1579. Bastards inherit from the mother, and the mother from them.
1580. Disposition of real estate, when the next heir is an alien.
SEC.
1581. Distribution of personal estate.; widow's portion.
1582. Advancements to children, deducted from their share.
1583. Distribution when the advancement is greater, and when less than a share.
1584. Considered a part of the estate from which made.
1585. Value of the advancement, how determined.
1586. Advancement made to the parent deducted from the descendants' share.
1587. What considered an advancement.
1588. Heirs, &c., take as tenants in common.

Descent of real estate.

§ 1572. The real estate of persons dying intestate, as to such estate, descends, subject to the payment of his debts, the charges against the estate, and the widow's dower, as follows:

1. To the children of the intestate, or their descendants, in equal parts.

2. If there are no children, or their descendants, then to the brothers and sisters of the intestate, or their descendants, in equal parts.

10 Ala., 622.

3. If there are no children, or their descendants, no brothers, or sisters, or their descendants, then to the father, if living, if not, to the mother.

9 Por., 497.

4. If there are no children, or their descendants, no brother, or sister, or their descendants, no father, or mother,

then to the next of kin of the intestate, in equal degree, in equal parts.

5. If there are no children, or their descendants, no brother, or sister, or their descendants, no father, or mother, or next of kin, capable of inheriting, the whole estate goes to the husband or wife of the intestate, if capable of taking; and if there is no husband, or wife, it escheats to the state.

Lineal descendants take the share among them which their ancestor would have taken.

§ 1573. Under the provisions of the preceding section, the lineal descendants, in equal degree, represent their ancestor; that is, the children of a deceased child, brother, or sister of the intestate, are entitled to inherit, in equal parts, the same share which such deceased child, brother, or sister, would have inherited, if living; the grand-children of such deceased child, brother, or sister, taking in equal parts the same share their parents would have inherited, if living.

No representation among collaterals. Exception.

§ 1574. There is no representation among collaterals, except with the descendants of the brothers and sisters of the intestate.

Kindred computed by the civil law.

§ 1575. The degrees of kindred, must be computed according to the rules of the civil law.

No distinction made against heirs of half blood. Exceptions.

§ 1576. There is no distinction made between the whole and the half blood in the same degree, unless the inheritance came to the intestate by descent, devise or gift, from, or of, some one of his ancestors; in which case, all those who are not of the blood of such ancestor are excluded from the inheritance, as against those of the same degree.

Posthumous children of the intestate inherit as other children.

§ 1577. Posthumous children of the intestate inherit, as if born in his life time; but no right of inheritance accrues to any other person than the children of the intestate, unless born at his death.

Bastards may inherit from the mother.

§ 1578. Every illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like manner as if born in lawful wedlock.

The mother inherits from a bastard, &c.

§ 1579. The mother or kindred of an illegitimate child, on the part of his mother, are, in default of children of such illegitimate child, or their descendants, entitled to inherit his estate.

When the heir is an alien the next heir who is a citizen inherits.

§ 1580. When the next of kin of the intestate are incapable of inheriting, from alienage, the estate descends to the nearest of kin of the intestate, who is a citizen of the United States.

Distribution of personal estate.

§ 1581. The personal estate of persons dying intestate, as to such estate, after the payment of the debts and charges against the estate, is to be distributed in the same manner as his real estate, and according to the same rules; except that the widow, if there are no children, or but one child, is entitled to one-half; if more than one, and not more than four, to a child's part, and if more than four children, to one-fifth part.

Widow's portion.

Advancements to children deducted from their share of the

§ 1582. Any estate, real or personal, which has been given by any intestate in his life time, as an advancement, to any child, or other lineal descendant, must be considered as part

estate. 4 Ala. 123; 8 Ala. 414; 13 Ala. 653.

of the estate, so far as regards the division and distribution thereof, amongst his children, or their descendants; and must be taken by such child or descendants, towards his share of the estate of the deceased.

If advancement exceeds share, the party takes nothing.

If less, it is deducted from his share.

§ 1583. If the amount of such advancement is equal to, or exceeds the share of the heir so advanced, he is excluded from any further portion in the division and distribution of the estate, but it is not required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to as much more as will give him a full share of the estate of the intestate.

If advancement is made in real or personal estate, it is considered part of such estate.

§ 1584. If the advancement is made in real estate, the value thereof for the purposes of the preceding section, is to be considered as part of the real estate to be divided; and if it be in personal property, it is to be considered as part of the personal estate to be distributed; and if in either case it exceeds the share of real or personal estate, to which the heir, child or descendant so advanced would have been entitled, he is not required to refund any part of it, but receives so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs, in the same degree.

Value of the advancement, how determined.

§ 1585. If the value of the estate, real or personal, is expressed in the conveyance, or in the charge thereof made by the intestate, or in the receipt given by the person receiving such advancement, it is to be considered as of that value, in the division and distribution of the estate; otherwise it is estimated according to its value when given.

Descendant of a party to whom an advancement was made takes his share subject to the advancement.

§ 1586. If any child, or other lineal descendant so advanced, die before the person making such advancement, leaving descendants or other heirs, such advancement must be taken into consideration in the division and distribution of the estate; and the amount thereof must be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, as if the advancement had been made directly to them.

What considered an advancement.

§ 1587. The maintaining, educating, or giving money to a child, or other lineal descendant, without intending it as a portion or settlement in life, is not an advancement.

Heirs take as tenants in common.

§ 1588. Whenever an inheritance, or share of an inheritance, descends to several persons, they take as tenants in common, in proportion to their respective rights, unless it is otherwise provided by law.

CHAPTER II.

WILLS.

ARTICLE 1. General provisions.
" 2. The execution and probate of wills.
" 3. Contesting the validity of wills.

ARTICLE I.

General provisions.

SEC.
1589. } Who may devise real estate by will; and who may take by devise.
1590. }
1591. Estates devised to those who cannot take, go to the heir.
1592. Devise of all of one's estate, passes the real estate, at the time of the death.
1593. Devise unless restricted, passes the whole estate.
1594. Estate "pur autre vie," becomes a chattel real, on grantee's death.
1595. Persons of eighteen years age, may bequeath by will.
1596. Property not disposed of by will, distributed, &c. as in case of intestacy.
1597. Marriage and birth if issue, revokes a man's will.
1598. Marriage of a woman revokes her will.
1599. Child born after date of will, revokes, when.
SEC.
1600. Manner of setting off such child's share.
1601. If child dies before receiving its share, it passes by the will.
1602. Devise not revoked by a contract to sell, unless the money is paid.
1603. An incumbrance created, does not revoke it.
1604. If land is devised, an additional estate acquired, passes also.
1605. A legacy or devise to a child, does not lapse by his death, &c.
1606. Debtor not discharged, by appointment as executor.
1607. The creditor is a competent witness, even when property is charged.
1608. Devisee or legatee, when a competent witness, &c.
1609. Widow may dissent from the will.
1610. Dissent to, made in twelve months and filed with the judge of probate.

All persons of full age may devise lands, &c. by will.

§ 1589. Every person of the age of twenty-one years, of sound mind, may devise, by his last will, his lands, tenements, or hereditaments, or any interest therein, descendable to his heirs.

Devises may be made to any person capable of holding lands

§ 1590. A devise of lands may be made to any person or corporation, capable by law of holding real estate.

Estates devised to aliens, &c., descend to the heirs, &c.

§ 1591. Any estate, or interest in real property, devised to a person, or corporation incapable of taking, descends to the nearest of kin capable of taking; or if he have no heirs competent to take, to the residuary devisee, if any are named in the will capable of holding such estate or interest; otherwise, to the husband or wife; otherwise to the state.

General devise of real estate passes all the estate held at time of testator's death.

§ 1592. Every devise made by a testator in express terms of all his real estate, or in any other terms denoting his intention to devise all of his real property, must be construed to pass all the real estate he was entitled to devise, at the time of his death.

A devise passes all the estate of the devisor if not restricted.

§ 1593. Every devise of land, must be construed to convey all the estate of the devisor therein, unless it clearly appears from the will that he intended to convey a less estate.

An estate pur autre vie is a chattel real on grantor's death.

§ 1594. An estate during the life of a third person, whether limited to his heirs or otherwise, is a freehold, only during the life of the grantee or devisee, but after his death is a chattel real.

Persons eighteen years old may bequeath personal property.

§ 1595. All persons over the age of eighteen years, of sound mind, and no others, may also, by their last will, dispose of all their personal property.

Property not disposed of by will, distributed as in case of intestacy.

§ 1596. All property not disposed of by will, must be administered and distributed, as in case of intestacy, by the executor or administrator, with the will annexed.

Wills made before marriage, revoked by marriage and birth of issue, unless children provided for either in the will or by advancement.

§ 1597. If after making of any will, disposing of his whole estate, the testator marry, and have issue of such marriage, born either in his life time, or after his death, and the wife or such issue is living at the death of the testator, such will must be deemed revoked, unless provision has been made for such issue, by some gift or settlement; or unless such issue has been provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence can be received for the purpose of rebutting the presumption of such revocation.

No evidence of a different intention can be received.

The marriage of a woman revokes her will.

§ 1598. If after making of a will by an unmarried woman, she marries, the marriage operates as a revocation of the will.

A child born after the making of a will takes the same share as if no will had been made.

§ 1599. Whenever a testator has a child, born after the making of his will, either in the life time or after the death of the testator, and no provision is made in the will in any way for such a contingency, such birth operates as a revocation of the will, so far as to allow such child to take the same share of the estate of the testator, as if he had died intestate.

Manner of setting apart such a child's portion.

§ 1600. The portion which such child is entitled to recover and receive, under the provisions of the preceding section, shall be taken and recovered from the estate of the testator, and from the parts of the devisees and legatees, as follows:

1. If there is any real or personal estate of the testator, which has not been devised or bequeathed by his will, and there are other children, or the descendants of other children, capable of taking the same by descent, and a widow, or any of them; the share of such child, which it would take by descent, or by distribution, with such widow, and other heirs, or any of them, must be applied towards the payment of the portion of such child; and if there are no other children, or the descendants of other children, the whole of such part of the real or personal estate, or so much thereof as may be necessary, must be applied to the payment and discharge of such portion.

2. If the same is insufficient to pay and discharge such portion, then any part of such estate, which would have gone to the residuary legatees of the testator, other than the widow, or any children of the testator; or so much of such part of the estate as may be necessary, must be taken, and applied to the payment of such portion.

3. If such portion be not thus paid, and satisfied, the same,

or the balance thereof, must be taken from the devisees and legatees of the testator, in proportion to the value of what they would respectively be entitled to receive under the will.

If the child die before receiving its portion it passes by the will.

§ 1601. If any such child die before receiving its portion, without descendants, such portion, or so much thereof as has not been received, passes by the will, as if such child had not been born.

A contract for the sale or conveyance of property devised by a will does not revoke the devise unless the whole purchase money has been paid.

§ 1602. When any testator, after making his will, makes any contract for the conveyance of any property devised in such will, and the whole, or any part of the purchase money remains unpaid to such testator at his death, the disposition of the property by such contract is not a revocation of the devise, either at law or equity, unless it clearly appear by the contract, or some other instrument in writing, to be intended as a revocation, and such property passes to such devisee, subject to the same remedies for a specific performance thereof, in favor of the persons entitled thereto, against the person to whom such devise was made, as might be had in law or equity, against the heirs of the testator, had the same descended to them; and the purchase money, when recovered by the executor of the testator, must be paid to the devisee of such property.

A charge or incumbrance created after a devise or bequest, does not revoke it.

§ 1603. A charge, or incumbrance upon any real or personal property, to secure any money, or the performance of any contract, does not operate as a revocation of any devise or bequest of such estate previously executed, unless it appears from the will, or instrument creating such charge or incumbrance, that such was the intention of the testator.

If an interest in real estate devised is afterwards acquired, it passes under the devise.

§ 1604. When any testator, after having executed a will devising any real property, afterwards makes a conveyance of his interest, and acquires a new estate therein, such new estate passes by his will to the person to whom the original estate or interest was devised; unless it appears from the will, or the instrument conveying the estate, or by which the new estate was acquired, that the testator intended such conveyance to operate as a revocation.

A legacy to a child does not lapse on his death, but vests in his descendants.

§ 1605. When any estate, real or personal, is devised, or bequeathed to a child, or other descendants of the testator, and such legatee or devisee dies in the life time of the testator, leaving a child, or other descendant, surviving such testator, such legacy does not lapse, but vests in such child, or other descendant, as if such devisee, or legatee, had survived the testator, and died intestate.

A debtor is not released by being made an executor.

§ 1606. The appointment of a debtor an executor, is not a discharge of the debt, unless it is so directed in the will.

A creditor is a competent witness even when property is charged with the debt by the will.

§ 1607. If any property is charged with the payment of any debts, by any will, and the creditor whose debt is thus charged is a witness to the execution of such will, he is, notwithstanding, a competent witness to prove such execution.

Devisee or legatee competent wit-

§ 1608. If any devisee or legatee is a subscribing witness to a will, and the will cannot be proved except by his evidence, such devise or bequest is void, and the witness may

ness, but cannot claim more under the will than he could take without a will. 6 Ala., 634.

be compelled to appear, and give evidence, as if no devise or bequest had been made to him; but if such devisee or legatee would have been entitled to any share of the testator's estate, if he had died intestate, then he is entitled to so much of such devise or bequest as does not exceed the share he would have received, had such testator died intestate.

Widow may dissent from the will and claim her dower. 10 Ala., 977; 6 Ala., 236.

§ 1609. The widow may in all cases dissent from the will of her deceased husband, and in the place of the provision made for her by such will, take her dower in the lands, and of the personal estate, such portion as she would have been entitled to in case of intestacy.

Dissent to be made in twelve months, and filed with the judge of probate.

§ 1610. Such dissent must be made in writing, and deposited within one year from the probate of the will with the judge of probate of the county in which the will is probated, and an entry thereof, specifying the day on which the dissent was made, made of record.

ARTICLE II.

The execution and probate of wills.

Sec.		Sec.	
1611.	Wills to be written, signed, and attested by two witnesses.	1621.	Wills proved in the probate courts; in what county.
1612.	If witnesses are competent when they sign, the will must be admitted.	1622.	Proceedings to obtain a will when withheld; penalty.
1613.	Wills, how revoked.	1623.	Party proceeded against, discharged on his affidavit.
1614.	Former will not revived, unless republished, by the cancellation of a later will.	1624.	Mode of proving a will.
1615.	Property, if not more than five hundred dollars, may be passed by an unwritten will.	1625.	Absence of witnesses to be accounted for before proof of the handwriting is allowed.
1616.	Circumstances necessary to render them valid.	1626.	If witness is beyond the state, his deposition taken.
1617.	Soldiers, seamen, &c., may make wills as heretofore.	1627.	Testimony to be recorded with the will.
1618.	Unwritten wills not to be probated for fourteen days from testator's death; citation to the widow, &c.	1628.	Certificate to be endorsed on the bill by the judge of probate.
1619.	To be reduced to writing in six days, or not allowed after six months.	1629.	Wills so proved and indorsed, received as evidence.
1620.	Who may offer the will for probate.	1630.	Wills admitted to probate in other countries; how admitted to probate here.
		1631. 1632. 1633.	Wills, when withdrawn for use in another county.

Wills to be in writing, signed and attested by two witnesses to pass real or personal property. 12 Ala., 687.

§ 1611. No will is effectual to pass real or personal property, except in the cases hereinafter provided for, unless the same is in writing, signed by the testator, or some person in his presence, and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator.

If witnesses are competent when

§ 1612. If the witnesses attesting the execution of any will are competent at the time of their attestation, their subse-

quent incompetency, from whatever cause it may arise, must not prevent the probate of such will, if otherwise satisfactorily proved. they attest the will must be admitted to probate.

§ 1613. No will in writing can be revoked, except in the cases provided in the preceding article, unless by burning, tearing, cancelling or obliterating the same, with the intention of revoking it, by the testator himself, or some person in his presence, and by his direction; or by some other will in writing, or some other writing of the testator, subscribed and attested according to the requisitions of section 1611; and when any will is burnt, torn, cancelled, or obliterated by any other person than the testator, his direction and consent thereto, and the fact of such injury or destruction, must be proved by at least two witnesses. Wills only revoked by cancellation, &c., or by other wills or writing attested as a will.

§ 1614. The making of any subsequent will, or writing, and the cancellation, destruction, or revocation thereof, does not revive any will previously executed, unless it appear, by the terms of such revocation, that it was the intention of the testator to revive and give effect to the first will; or unless, after such cancellation or destruction, he duly republish the previous will. Former will not revived by the cancellation of a subsequent will. Exceptions.

§ 1615. An unwritten will of personal property is valid only when the property bequeathed thereby does not exceed in value five hundred dollars. Wills of personal property, of $500, valid.

§ 1616. Such unwritten will, to be valid, must be made during the last sickness of the deceased, and at his dwelling, or where he had resided ten days or more, except when he was taken sick from home and died before his return; and it must be proved that the testator, at the time of making the same, called upon the persons present, or some of them, to take notice, or bear witness, or to that effect, that such was his will. Circumstances necessary to render such wills valid.

§ 1617. No provision in this article must be construed to prevent soldiers in actual military service, or mariners, or seamen at sea, from disposing of their personal property, as they might have done before the adoption of this code. Soldiers, seamen and marines may make wills as heretofore.

§ 1618. No unwritten will can be probated, or letters testamentary granted thereon, until after fourteen days from the death of the testator, nor till a citation has been served on the widow or next of kin, to appear and contest such will; unless it is shown that such widow and next of kin are out of the state, in which case notice must be given, by publication in some newspaper published in the county, or if none is published therein, in the one nearest to the court house thereof, for six successive weeks; and no such will must be established, until it is proved that such notice has been given. Unwritten wills not to be probated for fourteen days after the death of the testator. Citation to the widow or next of kin to be made.

§ 1619. After the expiration of six months from the time of making an unwritten will, no testimony must be received to prove the same, unless the words or the substance thereof was reduced to writing, within six days after making the same. Must be reduced to writing in six days or not proved after six months.

§ 1620. Upon the death of a testator, any executor, devi- Will may be

offered for probate by executor or any party interested.

see, or legatee named in the will, or any person interested in the estate, may have the will proved before the proper probate court.

Wills proved in the probate courts.

§ 1621. Wills must be proven in the several probate courts, as follows:

In what county to be proved.

1. When the testator, at the time of his death, was an inhabitant of the county, in the probate court of such county.

2. When the testator, not being an inhabitant of the state, dies in the county, leaving assets therein, in the probate court of such county.

3. When the testator, not being an inhabitant of the state, dies out of the county, leaving assets therein, in the probate court of the county in which such assets, or any of them, are.

Idem.

4. When the testator, not being an inhabitant of the state, dies, not leaving assets therein, and assets thereafter come into any county, in the probate court of any county into which such assets are brought.

Proceedings to cause will to be produced when it is alleged that one is withheld.

§ 1622. On the application to the probate court of the proper county, by any person interested, on oath, the judge of such court must issue a citation to any person alleged to have the custody or be in the possession of any last will, requiring such person to produce the same, before such judge, on a certain day, to be specified in such citation; and any person who, upon such citation served upon him, fails to produce such will, or to make the affidavit according to the provisions of the next section, by the day specified in such citation, may be committed to jail until he produces such will, makes such affidavit, or is otherwise discharged by law; and is also liable to all persons interested, for all damages caused by withholding such will.

Penalty for refusal to produce the will.

Party proceeded against discharged on his affidavit.

§ 1623. Such person must not be committed to jail, if he makes and files his affidavit that such will was never in his possession, or that he parted with the same before the service of such citation, to some person, whose name he must state, entitled to the custody thereof, in good faith, and without any intention to delay or defeat the probate thereof; or that he has casually lost or mislaid the same, and has made diligent search therefor, without success.

Manner of proving a will.

§ 1624. Wills offered for probate, except in the cases provided for by sections 1615 and 1616, must be proven by one or more of the subscribing witnesses, or if they be dead, insane, or out of the state, or have become incompetent since the attestation, then by the proof of the hand writing of the testator, and that of at least one of the witnesses to the will.

Absence of the witnesses must be accounted for before proof of the handwriting is admitted.

§ 1625. If none of the subscribing witnesses to such will are produced, their insanity, death, subsequent incompetency, or absence from the state, must be satisfactorily shown, before proof of the hand writing of the testator, or of any of the subscribing witnesses, must be received.

If witness out of the state his testimony taken by deposition.

§ 1626. When the subscribing witnesses, or any of them, reside out of the state, the judge of probate may issue a commission to take the testimony of such witness, in proof of such will.

§ 1627. If it appears, on the proof taken, that the will was duly executed, the testimony of the witnesses must be reduced to writing by the judge of probate, signed by the witnesses, and, with the will, recorded in a book provided and kept for that purpose. Testimony showing the due execution of the will to be recorded with it.

§ 1628. Every will so proved must have a certificate indorsed thereon, setting forth, in substance, that such will has been duly proven and recorded, with the proof; specifying, also, the date of the probate, the book in, and page or pages on which it is recorded; which indorsement must be signed by such judge of probate. Certificate of probate and of the evidence to be indorsed by the judge.

§ 1629. Every will, so proven and indorsed, may be read in evidence in any court of the state, without further proof thereof; and the record of such will, and proof, or a transcript thereof, certified by the judge of probate, must be received as evidence, to the same extent as if the original will was produced, and the same proof made. Wills so proved and endorsed may be read in evidence.

§ 1630. When the testator was not, at the time of his death, an inhabitant of this state, and his will has been duly proved in any other state or country, it may be admitted to probate in the proper court of this state, in manner following: A will proved in another country may be admitted to probate in this state.

1. If the will has been admitted to probate out of this state, but within the United States, such will, or a copy of the same, and the probate thereof, must be certified by the clerk of the court in which the same is proven, with the certificate of the judge, or one of the judges of such court, that the attestation is genuine, and by the proper officer; and if the will is proved before a court not having a clerk, or before an officer who is his own clerk, the certificate of the judge of such court, or officer, stating such fact, is sufficient. Will admitted to probate in another state to be certified for probate here.

2. If the will has been admitted to probate out of the United States, such will, or a copy of the same, with the probate thereof, must be certified by the clerk, or other officer, by whatever name called, of the court in which the will was proved, and the certificate of the judge, or one of the judges of such court, that the attestation is genuine; and if the will is proved before a court having no clerk, or an officer who is his own clerk, the judge of such court, or officer, must so certify, and, in that case, the attestation must be certified to be genuine by the judge of any court of record, or the mayor or chief magistrate of any town, city, county or borough, or by any diplomatic, consular, or commercial agent of the United States. Certificate when the will is admitted to probate beyond the United States.

§ 1631. Whenever any will has been proved and recorded for six months, in any county in this state, as required by this article, and such will is required to be proved out of this state, the judge of probate may, on the application of the executor, on oath, allow him to withdraw the will. Will may be withdrawn after six months to be proved in another country.

§ 1632. Whenever application is made to prove a will in this state, at least ten days' notice must be given to the widow and next of kin, or to either of them, residing and being within the state, before such application is heard. Notice of the application to be given to the widow, &c.

Notice, when given by publication.

§ 1633. If neither the widow or next of kin reside, and are within the state, notice of such application must be given, by publication, for three successive weeks, in a newspaper published in the county in which application is made; and if no paper is published therein, by posting notice of the same at the court house, three weeks before such application is heard.

ARTICLE III.

Contesting the validity of wills.

Sec.		Sec.	
1634.	Probate of wills, how and by whom contested.	1647.	If the judgment in the probate court is against the will, it is rejected; otherwise, admitted to probate.
1635. 1636.	Day for trial fixed, and witnesses subpœnaed.	1648.	Certificate sent to the probate court, of the judgment of the circuit court.
1637. 1638.	Jurors summoned, fine for default by juror.	1649. 1650.	Costs of such contests, execution for costs.
1639.	By-standers called to complete the jury.	1651. 1652.	Circuit court costs, when taxed.
1640. 1641.	Continuances, when granted; depositions, when taken.	1653.	Costs, how paid, when decreed against the estate.
1642. 1643.	Defaulting witnesses, rules of evidence, and mode of proceeding.	1654.	Contest of will in chancery, within five years.
1644.	Change of venue to another county.	1655.	Issues out of chancery, &c., evidence in such contest.
1645. 1646.	On such change, the papers, &c., sent to the circuit clerk of such county; it is then tried by the circuit court.	1656.	Time allowed for contest extended as to infants, &c.

Probate of wills; how and by whom contested.

§ 1634. A will may be contested, before the probate thereof, by any person interested therein, or by any person who, if the testator had died intestate, would have been an heir or distributee of his estate, by filing in the court where it is offered for probate, allegations in writing of the unsoundness of mind of the testator; or that the will was not duly executed, or of any other valid objections thereto; and thereupon an issue must be made up, under the direction of the court, between the person making the application, as plaintiff, and the person contesting the validity of the will, as defendant, which issue must, on the application of either party, be tried by a jury.

Day for trial to be set.

§ 1635. When the validity of a will is contested under this article, the judge of probate must appoint a day for the trial thereof.

Witnesses to be subpœnaed.

§ 1636. He must also, on application of either party, issue subpœnas for witnesses, to appear on the day fixed for such trial, and re-summon them to any day to which the same may be continued.

Jury to be summoned.

§ 1637. He must also direct the sheriff to summon such number of persons as a jury, to sit upon such trial, as may be necessary; or he must, if either party require it, cause fifteen persons to be drawn and summoned in the same manner as jurors are drawn and summoned for the circuit court.

Fine for default by a juror.

§ 1638. If any of the persons summoned as jurors fail to attend, the judge must enter a conditional fine of twenty-five dollars, which must be made absolute, unless such person appears, within thirty days thereafter, and renders a good excuse, being served with a notice of such judgment.

Bystanders may be called to fill up the panel.

§ 1639. If out of the number summoned, a jury is not completed from any cause, it may be completed from the bystanders or other persons summoned.

Continuance

§ 1640. The judge of probate may, on good cause shown by either party, continue the trial to any other day.

Depositions; when and how taken.

§ 1641. The testimony of witnesses to be read on such trial, may be taken by depositions in the like cases, and the same manner, as is provided by this code, for the taking of depositions in civil actions in the circuit court.

Proceedings against defaulting witnesses.

§ 1642. If any witness, being duly summoned, fails to attend, the judge of probate must endorse such failure on the subpœna, and deliver the same to the clerk of the circuit court of the county, and the same proceedings may be had in such court, as if such witness had failed to attend on a subpœna in that court; the endorsement of the judge of probate being presumptive evidence of his default.

Rules of evidence, &c., same as in other civil cases.

§ 1643. In all matters in relation to the evidence, mode of proceeding, investigation and determination of such contest, not specially provided for by this article, the court must proceed and be governed by the same rules and regulations as courts of law.

Change of venue.

§ 1644. At any time before the trial, either party may remove the same to another county, by proceeding as is required by this code in civil actions in the circuit court.

On removal of case to another county will, &c., sent to clerk of the circuit court of such county.

§ 1645. When an order is made removing the trial to another county, the judge of probate must transmit the will, subpœnas and all other papers belonging, and a transcript of all the entries relating thereto, to the clerk of the circuit court of the county to which it is ordered to be removed.

Circuit court then tries the issue.

§ 1646. Such circuit court, at the first term thereafter, must proceed to try the issue, unless the cause is continued.

Will rejected if judgment of probate is adverse to it: admitted if not.

§ 1647. When the judgment in the probate court is against the validity of the will, the probate thereof must be rejected, otherwise it must be admitted to probate.

If judgment is in circuit court, will and papers then to be returned, &c.

§ 1648. If the judgment is rendered in the circuit court, and no appeal is taken within thirty days thereafter, such judgment must be certified by the clerk of such court, and the will returned to the probate court from which the trial was removed, and the will must be probated or rejected in such probate court, as such judgment may be for or against the validity of the will.

Costs of contest; how paid.

§ 1649. In all cases contesting the validity of a will, under any of the preceding sections of this article, the costs must be paid by the party contesting, if he fails; otherwise it must be paid by the plaintiff, or out of the estate, or in such proportions by the plaintiff, or the estate, as the court may direct.

Execution for costs.

§ 1650. For costs directed to be paid by the plaintiff or defendant, execution issues as in other cases.

Circuit clerk to certify the costs to judge of probate.

§ 1651. If the costs, on the removal of the trial, are directed to be paid out of the estate, a bill of costs must be made out by the clerk of the circuit court, and certified to the judge of probate of the county from which the trial was removed.

Costs may be retaxed, &c.

§ 1652. Such bill of costs may be taxed by motion in the court in which the trial was had, and the same recertified to the judge of probate.

If costs allowed against estate, how paid.

§ 1653. When the costs are directed to be paid out of the estate, it may be collected as other claims against an estate.

Will may be contested in chancery within five years.

§ 1654. Any person interested in any will, who has not contested the same under the provisions of the preceding sections of this article, may, at any time within five years after the admission of such will to probate, in this state, contest the validity of the same by bill in chancery, in the district in which such will was probated, or in the district in which a material defendant resides.

Issue may then be tried by jury or by the chancellor.

§ 1655. The court of chancery may, in such case, direct an issue to be tried by a jury, and on the trial before the jury, or hearing before the chancellor, the testimony of the witnesses reduced to writing, according to the provisions of section 1627, are evidence to be considered by the chancellor or jury.

Infants and lunatics allowed a longer time to contest.

§ 1656. After the expiration of such five years, the validity of the will can only be contested by infants and persons of unsound mind, who are allowed five years from the termination of their respective disabilities; but in no case to exceed twenty years from the probate.

CHAPTER III.

THE GRANT OF LETTERS TESTAMENTARY, OR OF ADMINISTRATION.

Sec.	
1657.	On probate of the will, letters to be granted.
1658.	Persons disqualified from acting as executor, &c.
1659.	Administration granted, if the executors are disqualified.
1660.	Consent of the husband required, before the wife can act, &c.
1661.	On removal of the disability, the executor can act.
1662. 1663.	Renunciation of right to act; failure to apply, is a renunciation.
1664. 1665.	Grant of administration on such renunciation; order of grant of administration.
1666.	The executor of an executor has no right to act.
1667.	Grant of administration on estates of intestates.
1668.	Order of right to administration.
1669.	Failure to apply, waives the right.
1670. 1671.	Males preferred to females; computation by the civil law.
1672.	Selection between those equally entitled.
1673. 1674.	Grant to husband in right of his wife; renunciation.
1675.	Administration not granted till fifteen days after death, and the applicant to be examined on oath, &c.
1676.	Special administration, when appointed.
1677. 1678.	His authority and duties.
1679.	His authority ceases on the grant of other letters.

SEC.
1680. General administrator; his duties.
1681. Sheriff or coroner, when to be appointed.
1682. General administrator, sheriff, or coroner, not to administer till sixty days after death.
1683. 1684. Executors and administrators to give bond; how payable and approved.
1685. Testator may dispense with bond; exceptions.
1686. Requisition of bond may be resisted, when dispensed with by the will.
SEC.
1687. 1688. Forms of letters testamentary and of administration.
1689. Bond of general administrator.
1690. Administration attaches to the office of sheriff and coroner.
1691. Bond for cost, &c., required, on application for administration to the sheriff or coroner.
1692. Judge of probate liable for taking insufficient bond, &c.
1693. Authority proved by the letters.
1694. Letters not issued till lapse of the time for appeals, &c.
1695. Letters and bonds to be recorded; transcripts evidence.

On probate of will, letters testamentary to be granted.

§ 1657. Whenever a will has been admitted to probate in this state, the judge of the court in which the will was probated, may issue letters testamentary, according to the provisions of this chapter, to the persons named as the executors in such will, being fit persons to serve as such.

Persons disqualified from acting as executors.

§ 1658. No person must be deemed a fit person to serve as executor:

1. Who is under the age of twenty-one years.
2. Who is not an inhabitant of this state.
3. Who has been convicted of an infamous crime.
4. Who from intemperance, improvidence or want of understanding, is incompetent to discharge the duties of the trust.

Letters of administration granted if the executors named are disqualified.

§ 1659. If any such person is named as sole executor in the will, or if all the persons named therein are, from any of the causes enumerated in the preceding section, unfit to serve as executor, letters of administration, with the will annexed, may be granted as is provided by sections 1664 and 1665, as in case of all of the executors renouncing.

Consent of the husband necessary to qualify a wife to act, and the husband is also responsible.

§ 1660. No married woman is entitled to letters testamentary, unless her husband consent thereto, by a writing signed by him, and filed with the judge of probate; and by giving such consent, he becomes responsible for her acts jointly with her.

On the removal of the disability the person named entitled to join in the administration.

§ 1661. If the disability of a person under age, not an inhabitant of this state, or a married woman named as executor in any will, is removed before the administration of such will is completed, such person is entitled to supplementary letters testamentary, to be issued in the same manner as the original letters; and shall thereupon be authorized to join in the execution of such will, with the persons previously appointed.

Renunciation of right to act as executor; how made, &c.

§ 1662. Any person named as executor in a will, may renounce such appointment, by appearing before the judge of probate, and declaring such renunciation, which must be entered of record; or such person may renounce his appointment by an instrument in writing, under his hand, attested by a judge of probate, judge of the circuit or supreme court, or chancellor; which instrument, so attested, must be filed

in the office of the judge of probate of the county in which the will is probated.

On renunciation of one, the others to have letters alone. Failure to apply for letters is a renunciation.

§ 1663. If any person named as executor in the will, renounces, or if such person fails to apply for letters testamentary within thirty days after probate, and any other persons named therein as executors, make application for such letters, and are fit persons to discharge the trust, letters testamentary must issue to them, if they comply with the other requisitions of the law.

If the executors named renounce, or fail to apply, administration granted.

§ 1664. If no person is named in the will as executor; or if they all renounce, or fail to apply within the time specified in the preceding section, or are unfit persons to serve, the following persons are entitled to letters of administration, with the will annexed, in the following order:

Order of grant of administration.

1. The residuary legatee.
2. The principal legatee.

If such persons do not apply or are unfit to act, administration granted as in other cases.

§ 1665. If such persons fail to apply within such time, refuse to accept, or are unfit to serve, then such letters may be granted to the same persons, and in the same order, as letters of administration are granted in cases of intestacy.

The executor of an executor has no claim to act as executor.

§ 1666. No executor, of an executor, can, as such, administer on the estate of the first testator; but on the death of a sole, or surviving executor, letters of administration, with the will annexed, may be granted to the persons entitled thereto, as in any case in which a sole executor has renounced his appointment.

Letters of administration; when granted on the estates of intestates.

§ 1667. Courts of probate within their respective counties, have authority to grant letters of administration on the estates of persons dying intestate, as follows:

1. Where the intestate, at the time of his death, was an inhabitant of the county.
2. Where the intestate not being an inhabitant of the state, died in the county, leaving assets therein.
3. Where the intestate not being an inhabitant of the state, dies out of the county, leaving assets therein.
4. Where the intestate not being an inhabitant of the state, dies, leaving no assets therein, and assets are afterwards brought into the county.

Order of such grants of administration.

§ 1668. Administration of an intestate's estate, must be granted to some one of the persons herein named, if willing to accept, and fit to serve, in the following order:

1. The husband, or the widow.
2. The next of kin entitled to share in the distribution of the estate.

Idem.

3. The largest creditor of the intestate, residing within the state.
4. Such other person as the judge of probate may appoint.

Failure to apply within forty days of death of intestate waives right.

§ 1669. If no person entitled to the administration of the estate, according to the three first subdivisions of the preceding section, applies for letters, within forty days after the death of the intestate is known, such persons must be held to have relinquished their right to the administration.

Males preferred to females; and whole to half blood.

§ 1670. If several persons of the same degree of kindred to the intestate, are entitled to the administration, males are to be preferred to females, and the whole blood to the half blood.

Computation made under the civil law.

§ 1671. The computation is by the rules of the civil law.

Court may select between those equally entitled.

§ 1672. When there are several persons equally entitled to administration, the court may, in its discretion, grant letters to one, or more of such persons.

Granted to husband in right of wife.

§ 1673. When a married woman is entitled to the administration, it may be granted to her husband in her right.

Renunciation; how made.

§ 1674. Any person entitled to administration, may relinquish his right thereto, in the same manner as is provided for executors, by section 1662.

Administration not granted for fifteen days after death of the intestate. Judge may examine the party applying, and witnesses, &c.

§ 1675. No letters of administration must be granted till the expiration of fifteen days after the death of the intestate is known; and the court may, in all cases, examine the persons applying therefor, on oath, touching the time and place of the death of the intestate, and as to whether or not he left any will, and the other matters necessary to give the court jurisdiction; and may also examine any other witnesses to the same facts, and compel their attendance for that purpose, by subpœna, and attachment.

Special administrator; when and for what purpose appointed.

§ 1676. The judge of probate may, in any contest, respecting the validity of a will, or for the purpose of collecting the goods of the deceased, or in any other case, in which it is necessary, appoint a special administrator, authorising the collection and preservation of the goods of the deceased until letters testamentary or of administration have duly issued.

Authority of the special administrator.

§ 1677. Every such special administrator has authority to collect the goods and chattels of the estate, and debts of the deceased, and to secure and preserve such goods and chattels, at such expence as may be deemed reasonable by the probate court, and for such purposes may maintain suits as administrator.

He may sell perishable goods, &c.

§ 1678. He may also, under the direction of the probate court, sell such goods as are perishable, or wasting, after the same have been appraised, and notice given as in other cases of sale of the personal property of the intestate.

On the grant of administration his authority ceases. His duties in such case.

§ 1679. Upon letters testamentary, or of administration being granted, the authority of such special administrator ceases, and he must, on demand, deliver to the rightful executor, or administrator, all the assets of the deceased which may be in his hands; and render an account, on oath, to the probate court, of all his proceedings.

General administrator; his duties.

§ 1680. The jndges of probate must also appoint a suitable person as general administrator, within their respective counties, who must take charge of the estate of deceased persons, or act as special administrators in those cases in which no other person entitled thereto will administer, and no other person is appointed by the court.

Sheriff or coroner; when to be appointed administrator.

§ 1681. In case there is no general administrator, and no other fit person will administer, the court may commit administration to the sheriff or coroner of the county.

Administration not to be given to general administrator or coroner till sixty days after death of intestate.

§ 1682. The administration of an estate must not be committed to the general administrator, or to the sheriff, or coroner, except as special administrator, until the death of the decedent has been known sixty days; nor until one month after the death, resignation, or removal of the executors, or administrators previously appointed.

Bond to be given by executors and administrators.

§ 1683. Every person appointed executor, administrator, or special administrator, except in the cases otherwise provided for in this chapter, must give bond, with at least two sufficient securities, and in a penalty equal at least to double the estimated value of the real and personal property of such estate, conditioned to perform all the duties which are, or may be required of him by law, as such executor, or administrator.

Bond payable to and approved by judge of probate.

§ 1684. Such bond must be payable to, and approved by the judge of probate of the county having jurisdiction of the estate.

Testator may exempt his executor from giving bond.

§ 1685. Any testator may, however, by an express provision in his will to that effect, exempt an executor from giving bond; and when such provision is made, such bond must not be required except in the following cases:

Exceptions.

1. When any executor, heir, legatee, or other person interested in the estate, makes affidavit, showing his interest, and alledging that such interest is, or will be endangered for want of security.

2. When, in the opinion of the judge of probate, the estate is likely to be wasted, to the prejudice of any person interested therein.

Notice of such requirement to be given, and it may be resisted.

§ 1686. In the cases provided for by the preceding section, upon application for the executor, or administrator, to give security, he may show cause against such application, and must have such notice as the judge may deem reasonable; but if he is not in the state, the application may be heard, and determined without notice.

Form of letters testamentary.

§ 1687. Letters testamentary may be substantially in the following form:

The State of Alabama, } I, A. B., judge of probate of said
county. } county, certify that letters testamentary on the will of C. D., were, on the —— day of ——, 185 , granted to E. F., who has complied with the requisitions of the law, and is authorized to take upon himself the execution of such will. Dated this —— day of

Signed, A—— B——.

Form of letters of administration.

§ 1688. Letters of administration may be substantially in the following form:

The State of Alabama, } I, A. B., judge of the probate
county. } court of said county, certify, that letters of administration on the estate of C. D., (or letters of administration on the annexed will of C. D., or as the case may be,) were, on the —— day of ——, 185 , granted to E. F., who has duly qualified and given bond as such, and is authorized to administer such estate, (or to execute such

will, as the case may be.) Dated this —— day of ——, 185 .
Signed, A—— B——.

General administrator to give bond.

§ 1689. The general administrator of a county must give bond, with at least two sufficient securities, in an amount to be prescribed by the judge of probate, sufficient to secure all persons interested, payable to the judge of probate, and conditioned, faithfully to administer all estates which may come to his charge as such general administrator; which bond must be approved by such judge.

Administration of sheriff or coroner attaches to the office.

§ 1690. When the sheriff, or coroner, is appointed administrator, the administration attaches to the office, and the official oath and bond of such officer, are the security for his faithful administration.

On application to commit an estate to sheriff or general administrator bond required of the applicant to pay expenses.

§ 1691. When administration is committed to the general administrator, or to the sheriff, or coroner, on the application of a third person, such letters must not be granted, unless such person enter into bond, with security, to be approved by the judge, to pay the fees and allowances made by the court, on such administration, if the property of the estate is insufficient therefor.

Judge of probate liable for not taking bond or insufficient bond.

§ 1692. The judge of probate is liable for any neglect, or omission, in not taking, or for taking insufficient bond from any executor, or administrator; and any person injured thereby, may sustain an action against such judge, and his securities, and recover according to the injury proved.

Letters of administration conclusive evidence of authority to administer throughout the state.

§ 1693. Letters testamentary, or of administration, and letters appointing a special administrator, or to any general administrator, sheriff, or coroner, granted by any probate court having jurisdiction, are conducive evidence of the authority of the persons to whom the same are granted, from the date thereof until the same are revoked; and when granted, exclude the probate court of every other county, from the jurisdiction thereof, and extend to all the property of the deceased in the state.

Letters not to issue till time for appeal has passed, nor till the appeal is disposed of.

§ 1694. On application to execute a will, or administer on an estate, no letters testamentary, or of administration, must issue, until the time for taking an appeal thereof has passed; and if such appeal is taken, no letters in chief must be granted until the appeal is finally disposed of; but a special administrator may be appointed, if necessary.

Letters of administration and bonds to be recorded, and transcripts are evidence.

§ 1695. All letters testamentary, or of administration, general, or special, and the bonds given by executors, or administrators, must be recorded by the probate judge; and transcripts thereof, duly certified, are evidence in all the courts of this state to the same extent as if the originals were produced.

CHAPTER IV.

THE REMOVAL OF, AND REQUIRING ADDITIONAL BONDS OF EXECUTORS AND ADMINISTRATORS, AND PROCEEDINGS ON THE DISCOVERY OF A WILL AFTER THE GRANT OF LETTERS.

Sec.		Sec.	
1696.	Causes of removal of executors or administrators.	1713.	Suits on executors' and administrators' bonds; who may sue.
1697.	Additional bonds, when required.	1714.	Effect of bond, irregularly taken or executed.
1698.	Application made to the court granting the letters.	1715.	Release of sureties when additional bond is given.
1699.	Application to be in writing, and to state the grounds.	1716.	If not required by the surety, both remain in force.
1700.	Notice of application, how given to the representative.	1717.	Rights of sureties on such bonds, among themselves.
1701.		1718.	Resignation, how made; to be entered of record.
1702.	Expense of the publication.	1719.	Liability after resignation.
1703.	Trial of the question; jury trial, when allowed.	1720.	Administration again granted, on death, removal, or resignation of the representative.
1704.		1721.	If one resign, &c., the others continue to act.
1705.	Costs of such proceedings.	1722.	Letters granted, revoked on discovery of a will.
1706.	Order to give additional bond; if not complied with, letters revoked.	1723.	If the executor does not apply, the will to be annexed to the letters first granted.
1707.			
1708.	When the judge may remove, or require additional bond of the representative without application.		
1709.			
1710.	General administrator, when removable.		
1711.	Additional bond, when required of him.		
1712.	Additional bonds, when required of sheriff or coroner.		

Causes of removal of executor or administrator.

§ 1696. Any executor, or administrator, may be removed, and his letters revoked, for any of the following causes:

1. His removal from the state.

2. Imbecility of mind; intemperance; continued sickness, rendering him incapable of the discharge of his duties.

3. Failing to make and return inventories, accounts of sales; to make settlements, as required by law; or the failure to do any act as such executor or administrator, when lawfully required by the judge of probate.

4. The wasting, embezzlement, or any other maladministration of the estate.

Executors and administrators may be required to give additional bond, and on refusal their letters may be revoked.

§ 1697. Such executor or administrator may also be required to give additional bonds, and, in default thereof, be removed, and his letters revoked, in the following cases:

1. When it is shown to the court by his securities, or either of them, that he has, or is likely to become, insolvent, and that they have, or probably will sustain loss thereby.

2. When such letters have been granted, on insufficient security, or the security has become insufficient since the grant, or any of such securities have removed from the state.

3. When the penalty of the bond is not sufficient to secure the due performance of the trusts committed to such executor or administrator.

Applications for requiring additional bonds, or for removal of executor or administrator, made to the court which granted letters.

§ 1698. Application for the removal of any executor or administrator, or for the purpose of requiring an additional bond, must be made to the probate court from which letters issued; and may be instituted by any creditor, legatee, devisee, heir, distributee, or by any coexecutor, coadministrator, or the sureties, or any of them.

Application in writing and to state grounds.

§ 1699. Such application must be in writing; must specify the grounds of complaint; and be verified by oath.

Citation to answer to issue on such application.

§ 1700. A citation to such executor or administrator, to appear and answer the application, on a day specified therein, must be served on him five days before the hearing the complaint.

If absent from the state notice given by publication.

§ 1701. If such executor or administrator is not an inhabitant of, or is absent from the state, upon such fact being shown by proof satisfactory to the judge, he must direct notice of such application to be given by publication in some newspaper published in the county, for three successive weeks; and if none is published in the county, in the paper published nearest to the court house thereof, for that length of time.

Expense of publication.

§ 1702. The applicant must pay the expense of such publication, which may be taxed as costs.

Trial of the question.

§ 1703. On the day specified in the citation, or after publication as required, or on any day thereafter to which the hearing may be continued, the court must proceed to hear the proofs, and may, in its discretion, examine the parties.

Jury; when allowed.

§ 1704. When the complaint charges embezzlement, waste, or any other maladministration of the estate, either party is entitled to a jury.

Costs of the proceeding.

§ 1705. If the application is determined against the applicant, he must be taxed with the costs; otherwise, the executor or administrator; for which execution may issue.

Order to give additional bond.

§ 1706. If an additional bond is required by the court, an order must be made to that effect; allowing such time to give the same, as the court may think reasonable.

On refusal to give it, letters to be revoked.

§ 1707. If such order is not complied with, within the time prescribed, the executor or administrator must be removed, and his letters revoked.

Judge of probate may remove the representative, first giving him notice, or require additional bond.

§ 1708. Whenever the judge of probate has reason to believe that any just ground or cause of removal exists, or that an additional bond should be required of an executor or administrator, such judge may cause a citation to be served on him, requiring him to appear on a day therein named, five days after service thereof, and show cause why he should not be removed, or give an additional bond, as the case may be.

If the charge is not answered he must be removed.

§ 1709. If no sufficient cause is shown, the court may remove such executor or administrator, or require him to give an additional bond; and, on failure to give such additional bond, within the time prescribed, the court may remove him.

General administrator;

§ 1710. The general administrator is removable for the same causes as other administrators. The removal may be

when and how removed

made by the judge of probate without notice, and the grounds thereof must be entered on the minutes of the court.

Additional bond may be required of him.

§ 1711. An additional bond may also be required of the general administrator, whenever the judge of probate deems it necessary to secure the interests of the estates confided to his charge; and, failing to give such bond within the time prescribed by the court, he must be removed, and his letters revoked.

Proceedings when sheriff's or coroner's bond is not sufficient to secure estate.

§ 1712. Whenever the official bond of the sheriff, or coroner, is, in the opinion of the judge of probate, insufficient to secure the interests of the estates confided to them, he must, if the circuit court is in session, notify the grand jury thereof; and if such court is not in session, give notice to the county commissioners, and he may be required to give an additional bond, according to the provisions of section 136.

Bonds; how and by whom sued on.

§ 1713. Any bond given by executors or administrators, as such, may be sued or proceeded on, in the name of any party aggrieved, until the whole penalty is exhausted.

Proceedings on a bond which is irregularly taken.

§ 1714. When any executor or administrator gives a bond, which is not payable, or conditioned as required by law, such bond is not void, but stands in the place of the original bond, subject, on its condition being broken, to all the remedies which could have been maintained on such bond, had the same been payable, and conditioned as required by law.

Discharge of sureties when additional bond is given.

§ 1715. When an additional bond is given on the application of the security of an executor or administrator, such security is discharged, as to all breaches subsequent to the execution and approval of the additional bond.

If additional bond is not required by a surety the bonds are both in force.

§ 1716. When the additional bond is not given on the application of a security, the former bonds are not discharged, but each remains of the same force and obligation, as if such additional bond had not been given; and any person aggrieved, for a breach of the last bond, may proceed on either, or all of such bonds, in the same, or in separate proceedings.

Rights of sureties on such bonds among themselves.

§ 1717. The securities in either bond, who have been compelled to make any payments thereon for the principal obligor, on a breach subsequent to the execution of the last bond, have the same remedies against the securities in the remaining bonds, as cosureties have against each other; and may recover against such sureties, such an amount as shall be in the same proportion to the sum paid by the plaintiff, as the aggregate penalty of the two bonds bears to the penalty of the bond of the defendant; apportioning the same among the solvent securities.

Resignation of representative.

§ 1718. An executor or administrator may resign, by a writing subscribed by him, and in such case his resignation must be entered of record.

Liability of representative after resignation.

§ 1719. In case of resignation the executor or administrator, and his securities, are bound for all the assets not administered, which shall not be delivered over to his successor.

§ 1720. If the sole executor, or all of the executors or

administrators, die, resign, or are removed, the probate court having the jurisdiction of the estate must grant letters of administration, with the will annexed, or of the goods and chattels, rights, &c., unadministered, to the person entitled thereto, as in cases of intestacy. Administration; how granted on resignation, removal or death of representative.

§ 1721. When an executor dies, resigns, or is removed, and there is any other executor or administrator, no other must be appointed, but such executor or administrator must complete the administration. If one dies, resigns or is removed, the others continue to act.

§ 1722. If, after granting of administration, as in case of intestacy, any will is proved, and the executor therein named appears, claims letters testamentary, and complies with the requisitions of the law, the probate court having jurisdiction must revoke the letters of admistration, and grant letters testamentary to such executor. On production and proof of will letters before granted must be revoked.

§ 1723. If, in the case provided for by the preceding section, the sole executor, or some of the executors, within five days after the proof of such will, do not appear and take out letters testamentary thereon, a copy of the will must be annexed to the letters of administration, and must be executed by the administrator. If the executor do not apply for letters, the will to be annexed to the letters already granted, &c.

CHAPTER V.

COLLECTING OF THE PROPERTY OF THE DECEASED; INVENTORY, APPRAISEMENT, AND RETURN THEREOF.

Sec.	
1724.	The representative collects the property, &c., and makes an inventory.
1725.	Contents of the inventory.
1726.	Inventory to be sworn to and returned.
1727. 1728.	Appraisers appointed and appraisement made.
1729. 1730.	Appraisement to be sworn to; inventory and appraisement to be returned in two months.
1731. 1732.	Supplemental inventory, and appraisement under it.
1733.	New appraisers, when to be appointed.
1734.	Notice given by the representative of his appointment.
1735. 1736.	How published, penalty for not publishing the notice.

§ 1724. It is the duty of every executor or administrator, immediately after taking out letters, to collect and take into his possession the goods and chattels, money, books, papers, and evidences of debt of the testator, or intestate, except the personal property reserved under the provisions of the following chapter, and to make a full inventory of the same. The representative takes possession of the property, &c., of the deceased, and makes an inventory.

§ 1725. The inventory must set forth the goods and chattels, enumerating each article separately, all debts due or accruing to the testator, or intestate: the time such debts are due, the amount of the same, and how due, with the credits, if any there are, the name of the debtor, and the amount of money. What the inventory must show.

Inventory to be returned under oath.

§ 1726. On the return of the inventory, the executor must take and subscribe an oath, to be administered by the judge of probate, that such inventory is full and complete, as to the goods and chattels, debts and money of the testator, or intestate, which have come to his knowledge or possession.

Appraisers to be appointed.

§ 1727. At the time of the grant of letters, the court must appoint three appraisers in each county in which it is necessary to make an appraisement of the estate of the deceased.

Appraisement; how made.

§ 1728. Such appraisers must appraise each article specified in the inventory made by the executor or administrator, at its true value, and set down opposite to such article, respectively, such value in dollars and cents, in figures.

Appraisement to be sworn to.

§ 1729. The appraisement must be subscribed and sworn to by the appraisers.

Inventory and appraisement; when returned.

§ 1730. The inventory and appraisement must be returned within two months after the grant of letters.

Supplemental inventories.

§ 1731. The executor or administrator must make supplemental inventories of the estate of the deceased, which may come to his knowledge or possession, after making of the first inventory.

Appraisement under such inventory.

§ 1732. An appraisement must be made of such property, by the appraisers, on oath, and in the same manner as the first appraisement was made.

New appraisers; when appointed.

§ 1733. New appraisers may be appointed by the court, from time to time, as may be necessary.

Representative to give notice of his appointment. Its contents.

§ 1734. Executors and administrators must also, within one month from the grant of letters, give notice of their appointment, stating the name of the deceased; the day on which letters were granted; by what court, stating the county, and requiring all persons having claims against the estate to present the same within the time allowed by law, or that the same will be barred.

Notice; how published.

§ 1735. This notice must be given in a paper published in the county in which the letters were granted; and if none is published in such county, in the one published the nearest to the court house thereof, or in any adjoining county, and must be published for six successive weeks.

Penalty for failure to give notice.

§ 1736. It is the duty of the judge of probate to see that such publication is duly made; and any executor or administrator failing to make the same, must not be allowed any compensation as such, but he and his securities are liable, on proof that such notice has not been given, to any creditor for the amount which he would have been entitled to out of the assets of the estate, had his claim been duly presented.

CHAPTER VI.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS.

ARTICLE 1. The settlement and payment of debts and legacies; proceedings to enforce distribution and payment before final settlement.
" 2. Of rendering accounts and making settlement.

ARTICLE I.

The settlement and payment of debts and legacies; proceedings to enforce distribution and payment before final settlement.

SEC.
1737. All property, real and personal, is charged with the decedent's debts.
1738. Certain property exempt, in favor of the widow and infant children.
1739. A child leaving the family, withdraws his share of such property.
1740. Live stock may be killed for family use.
1741. Order of payment of the debts of the deceased.
1742. No preference among debts of the same class.
1743. Sale of personal property made by order of the court.
1744. Application for such order; notice of the application.
1745. The application may be contested.
1746. 1747. 1748. Advertisement of sale, hours of sale, terms of sale.
1749. Slaves sold at the court house.
1750. Crops sold by private sale, on leave granted by the court.
1751. 1752. Lands how rented, slaves hired out; security to be taken.
1753. Accounts of sales to be made and returned.
1754. Sale of lands to pay debts, when there is a will.
1755. Sale of lands to pay debts when there is no will.
1756. Application to the court for an order to sell.
1757. Day of hearing to be fixed, and notice given.
1758. 1759. Proof required; any one interested may contest.
1760. Order of sale on hearing, to be made by court.
1761. Application, when to be dismissed; costs in such cases.
1762. 1763. Advertisements of the sale; security to be taken.
1764. Terms of sale of land; sold at the court house.
1765. Returns of sale made and examined.
SEC
1766. 1767. 1768. Sales, when set aside; re-sale ordered.
1769. Order of confirmation of the sale.
1770. Conveyances only made after payment of purchase money.
1771. Order of distribution, on report of the solvency of the estate.
1772. Payment of legacies, when compelled.
1773. Application for the order, by whom made, its contents, &c.
1774. Citation to the representative.
1775. Hearing of the case, and order of payment, on giving a refunding bond.
1776. The refunding bond, its amount, condition, &c.
1777. Value of the legacy to be entered, and execution issued in sixty days.
1778. Order of distribution after eighteen months, on application, &c.
1779. Contents of the application to be verified by oath.
1780. 1781. Citation to the representative; distribution, when made.
1782. 1783. Refunding bond required before the payment, &c., costs.
1784. Refunding bond to be recorded.
1785. 1786. Such bonds secure the representative and creditors.
1787. Value of the property recoverable on the bond.
1788. Rights of the parties to such bonds, among themselves.
1789. The order of the court protects the representative.
1790. Payment, after eighteen months, protects the representatives as to claims not presented.
1791. Debts not due to be paid on deducting the interest.
1792. 1793. Orders of distribution, how executed and returned.
1794. Proceedings when the property cannot be divided without sale.
1795. Exceptions to the report; by whom made.
1796. On confirmation of the report, a sale ordered.
1797. Advertisement and sale.

SEC.
1798. On confirmation, the property delivered.
1799. Judgments, notes, &c., divided or sold as other property.
SEC.
1800. Judgments to be assigned on such division.

All property charged with the payment of debts.

§ 1737. The whole property of the decedent is charged with the payment of his debts, and the same must be sold for that purpose, if necessary, except in the cases provided for by the next section.

Property exempt in favor of the widow and infant children.

§ 1738. When the deceased leaves a widow or a child, or children under the age of twenty-one years, members of his family, the following property is exempt from sale for the payment of debts:

1. All articles of apparel of the widow and children, and all yarn or cloth on hand, intended for their use or consumption.

2. The wearing apparel of the deceased, which must be distributed at the discretion of the executor or administrator, unless otherwise disposed of by the deceased.

3. The family Bible, and all school and prayer books in use in the family, and all family portraits and miniatures.

4. The spinning wheels, looms, cards, and other implements of industry in use in the family; and as many bedsteads, beds, and bedding, and other household and kitchen furniture, as may be necessary for the use of the family.

5. Such grain, stores, and groceries on hand as may be necessary for the subsistence of the family for twelve months.

6. If it is found necessary to sell all the real property for the payment of debts, the widow, or if there is no widow, the executor, or administrator, must select real estate to the value of five hundred dollars, to include the homestead, or such portion of the same as can be selected, without injury to the remaining portion of the estate, and if this cannot be done, other lands in the place thereof, to be estimated by the appraisers, and set off by metes and bounds, which is exempt from sale, and the title to which vests in such widow and child, or children; or in the widow, if there be no children; or in such child and children, if no widow.

A child on leaving the family is entitled to his share of such property.

§ 1739. Any child leaving the family of the deceased, is entitled to an equal share of the personal property reserved from sale by this article, which is on hand at the time such child ceases to be a member of the family.

Live stock killed for the family use.

§ 1740. Any live stock necessary for the subsistence of the family, may also be killed for their use, at any time before the final settlement, or distribution of the estate.

Order of payment of debts of the deceased.

§ 1741. The debts against the estate are to be paid in the following order:

1. The funeral expences.

2. The fees and charges of administration.

3. Expences of the last sickness.

4. Taxes assessed on the estate of the deceased, previous to his death.

5. Debts due to overseers as such, for services rendered the year of the death of the decedent.

6. The other debts of the deceased.

No preference to be given among debts of same class, whether due or to become due.

§ 1742. No executor, or administrator, must, before the expiration of eighteen months from the grant of letters, give a preference in the payment of any debt, over others of the same class; neither is a debt due and payable entitled to any preference over debts of the same class not due.

Personal property sold for payment of debts by order of the court or when directed by will.

§ 1743. Any part of the personal property of the decedent may be sold for the payment of debts, on the order of court, on the application of the executor, or administrator, unless power is conferred by the will to sell such property for that purpose.

Application; how made, and notice how given.

§ 1744. Such application must, in all cases, be verified by affidavit; and if the application is to sell slaves, notice thereof must be given, by advertisement in some paper published in the county, for three successive weeks; or if there is no paper published in such county, by notice posted at the court house door, three weeks before such application is heard.

The application may be contested.

§ 1745. Any person interested may appear and contest such application, and show that no sale is required, or that it is more for the interest of the estate, that other personal, or real property, should be sold.

Advertisement of sale; how made.

§ 1746. When the application is granted for the sale of any personal property, the executor, or administrator, must advertise the day, place, and terms of sale, and the description of the property, in some paper published in the county in which the sale is to be made, for at least thirty days before such sale; and if no paper is published therein, by posting such advertisement the same length of time at the court house, and three other public places in such county.

Hours of sale.

§ 1747. Such sale must not commence before the hour of twelve in the morning, or continue longer than five in the afternoon; and if not completed within those hours, may be continued from day to day.

Terms of sale.

§ 1748. Such sale may be for cash, or credit, not exceeding twelve months, as the court may direct.

Slaves to be sold at the court house.

§ 1749. All slaves sold under order of court, must be sold at the court house of the county in which the sale is directed to be made; other personal property may be sold at such place as the court may direct.

Crops may be sold at private sale by leave of the court.

§ 1750. The crops of an estate may be sold by the executor, or administrator, at private sale, on application to, and an order from the court; and such crops may be sold either in or out of the state.

Lands; how rented. Slaves; how hired.

§ 1751. Administrators and executors may rent the lands of the deceased at public auction, and hire out the slaves of the deceased, either at public auction or by private contract; in each case securing the payment of the rent, or hire, by notes, or bonds, with two good and sufficient securities, and the proceeds thereof are assets.

§ 1752. When the sale is on a credit, notes or bonds,

Security to be taken on sales.

with at least two sufficient securities, must be taken by the executor, or administrator.

Accounts of sale; when made and returned.

§ 1753. All accounts of sales made by an executor, or administrator, must be returned on oath, within sixty days after such sale; must be recorded; and the return may be compelled by attachment.

Sale of lands; when to be made for payment of debts when there is a will.

§ 1754. Lands may be sold by the executor, or administrator, with the will annexed, for the payment of debts, in the following cases:

1. When the will gives no power to sell the same for that purpose, and the personal estate is insufficient therefor.

2. When a sale of the lands is more beneficial than a sale of slaves, and is not in conflict with the provisions of the will.

When there is no will.

§ 1755. In cases of intestacy, lands may be sold by the administrator for the payment of debts:

1. When the personal property is insufficient therefor.

2. When it is more beneficial for the estate to sell lands than slaves.

Application to be made for order to sell.

§ 1756. The sale of lands provided for in the two preceding sections, must be on the application of the executor, or administrator, stating the grounds thereof, and must be verified by oath.

Day fixed for the hearing and notice given.

§ 1757. The court must appoint a day for hearing such application, and notice thereof must be given, by advertisement, in some paper published in the county, for three successive weeks; or if no paper is published in such county, by posting such notice at the court house door, and three other public places in the county, three weeks before the day appointed for making the application.

Proof to be made by the representative.

§ 1758. On the day appointed for hearing the application, or any other to which it is continued, the applicant must show to the court that the personal property of the estate is insufficient for the payment of debts, or that it will be more for the benefit of the estate that lands should be sold than slaves.

Contest of application.

§ 1759. Any party interested may contest the application.

Order of sale; when to be made by the court.

§ 1760. If the court, on the hearing, is satisfied that the personal property of the estate is insufficient to pay the debts, or that it will be more for the interest of the estate that lands should be sold than slaves; and if the application is by an executor, or administrator, with the will annexed, that no power is given by the will for that purpose, the court may direct the sale of all, or such portion of the real estate as may be necessary to pay the debts.

Application; when to be dismissed. Costs in such case.

§ 1761. If, on the hearing of the application, the facts are not proved, the same must be dismissed at the costs of the applicant, for which execution may issue against him and his securities.

Advertisement of sale.

§ 1762. When the application is granted, and the lands directed to be sold, the executor, or administrator, must give notice, by advertisement, in some paper published in the county in which the lands lie, for three successive weeks;

T 21,47

and if no paper is published in such county, by advertisement, posted at the court house, and three other public places in such county.

Security to be taken for the purchase money.

§ 1763. The executor, or administrator, must secure the purchase money by taking the notes, or bonds, of the purchaser, with at least two sufficient securities.

Terms of sale; how fixed. Sale made at the court house.

§ 1764. The lands may be sold on such credit as the court may direct, not exceeding two years; and they must be sold at the court house of the county in which they lie; and the sale conducted in all respects as the sale of personal property.

Returns of sale; when made. Returns to be examined.

§ 1765. The executor, or administrator, must, within sixty days after such sale, report on oath his proceedings to the court, who must examine the same, and may also examine witnesses in relation thereto.

Sales; when set aside.

§ 1766. If, on such examination, the court is satisfied that the sale was not fairly conducted, or that the amount for which the land, or any portion of the same, sold, was greatly disproportionate to the real value, the court may vacate such sale, either in whole, or in part.

Sale to be set aside when the security is not good.

§ 1767. If it is made to appear to the court, previous to the confirmation of such sale, that the securities taken on the notes or bonds of the purchasers are insufficient, such sale, as to every such purchaser, must not be confirmed until he gives security for the purchase money to the satisfaction of the court; and if such security is not given, the sale must be vacated as to the purchaser thus failing.

Resale to be made.

§ 1768. When any sale of land is vacated, in whole or in part, according to the provisions of the two preceding sections, the court must direct another sale to be had, which must be advertised and conducted in all respects as is provided for the sale of land under the provisions of this article.

Order of confirmation of sale.

§ 1769. Whenever the court is satisfied that the sale was fairly conducted, and the land sold for an amount not greatly disproportionate to its real value, and the purchase money is sufficiently secured, it must make an order confirming such sale.

Conveyance not made till payment of the purchase money is complete.

§ 1770. After such confirmation, and when the purchaser has paid the whole of the purchase money, on his application, or that of the executor or administrator, the court must order a conveyance to be made to such purchaser, by such executor or administrator, or such other person as the court may appoint, conveying all right, title and interest which the deceased had in such lands, at the time of his death.

A representative may report the estate solvent and obtain an order of distribution. Effect of such order.

§ 1771. When the executor or administrator is satisfied that the estate is solvent, he may at any time so report it, and obtain an order of distribution as to the whole, or any part of the property; but in such case, if the order is made before a final settlement of such estate, the order and proceedings thereon are not a defence in any action brought against such executor or administrator, as such.

Payment of legacies;

§ 1772. After the expiration of eighteen months from the grant of letters testamentary, or of administration, with the

when compelled.

will annexed, if there are more than sufficient assets in the hands of such executor or administrator to pay the debts of the deceased, any legatee may apply to the probate court of the county in which letters were granted, to compel the payment of such legacy.

Application for the order; by whom made, &c.

§ 1773. The application must set forth the claim of the applicant; must allege a sufficiency of assets in the hands of such executor or administrator to pay the same, after discharging the debts of, charges on, and other legacies entitled to priority from such estate.

Citation to the representative to answer, &c.

§ 1774. The judge of probate must appoint a day for hearing such application, and a citation must be served on the executor or administrator, notifying him of the grounds of such application, and the day appointed for hearing the same, ten days before such day.

Hearing of the case and order of payment on giving a refunding bond.

§ 1775. On the day appointed, or on any other day, to which the same is continued, the court must hear the same, and if it appear that the applicant is a legatee, and that after the payment of such legacy, there will be a sufficiency of assets to pay all the debts which have been presented, charges and other legacies entitled to priority, the court may direct the payment, or delivery of such legacy, or any part thereof, according to the proof of assets, and of the other legacies in the same degree, with the applicant, on the legatee executing a refunding bond according to the provisions of the next section.

Refunding bond; to whom payable, its amount and condition.

§ 1776. Such refunding bond must be payable to the executor or administrator with the will annexed, and in double the amount directed to be paid, or in double the value of the property to be delivered, to be ascertained by the appraisement, or other evidence satisfactory to the court, with at least two sufficient securities, conditioned to refund the amount paid, or to return the property, or pay the value thereof, with interest on such amount or value, from the time the same was received, should the assets prove insufficient to discharge the other debts presented, and charges.

Value of legacy to be entered of record and execution to issue in sixty days.

§ 1777. If the legacy is not payable in money, the value thereof, as ascertained by the court under the preceding section, must be entered of record; and if the amount directed to be paid, or the property directed to be delivered according to the provisions of section 1775, is not paid or delivered, within sixty days after such order, an execution may issue for such amount, or the value of such property, against such executor or administrator, and his securities.

Distribution to be made in eighteen months on application, &c.

§ 1778. The court may also, in cases of intestacy, make an order of distribution out of the assets of the deceased, on the application of any person entitled to distribution, after eighteen months from the grant of letters.

Application to state the applicant's share, &c.

§ 1779. Such application must specify the share to which the applicant is entitled; must alledge that the assets of the deceased are more than sufficient to pay the debts, and must be verified by oath.

Citation to the representative.

§ 1780. A day must be appointed for the hearing, and a citation notifying the administrator of the grounds of the application, and the day of hearing the same, must be served on him, ten days before such day.

Order of distribution; when made.

§ 1781. On the day appointed, or on any other day to which the application is continued, if the court is satisfied from the evidence that the assets of the deceased are more than sufficient to pay the debts, it may make an order of distribution for such portion of the distributive share of the applicant, as may be authorized by the evidence.

Refunding bond given on payment of distributive share, &c.

§ 1782. In making such order, the court must be particular not to exceed the share which the applicant would be entitled to on a final settlement and distribution; and the order must in no case be made, unless the applicant give a refunding bond, with two sufficient securities, to be approved by the judge of probate, in double the amount distributed to the applicant, or in double the value of his share of the property directed to be distributed; which value must be ascertained by the appraisement or other evidence, and entered of record, and conditioned to refund the amount directed to be paid, or to return the property received on such distribution, or pay the value thereof, and interest on such amount or value, from the time the same was received, if the assets are insufficient to discharge the debts or claims against the estate.

Costs.

§ 1783. If any application made under the provisions of this article is determined against the applicant, he must pay the costs.

Refunding bonds to be recorded.

§ 1784. The refunding bonds taken under the provisions of this article, must be recorded by the judge of probate, and then delivered to the executor or administrator; and a transcript of such bonds, duly certified, is evidence to the same extent as the original would have been, if produced.

Such refunding are a security for the representative.

§ 1785. The refunding bond executed under this article, stands as security for the executor or administrator, should the assets in his hands, after any payment of money or delivery of property under the order of the court, prove insufficient to pay the debts and claims against such estate, and the charges thereon, and the executor or administrator pays the same.

Also for creditors.

§ 1786. Such bond also stands as security for the creditors of the estate, and any creditor may sue thereon.

Value of the property delivered; recoverable on such bonds.

§ 1787. The extent of the recoveries on such bonds, is the amount or value of the property received by the legatee or distributee, and interest on such amount or value, from the date of its receipt; and the value may be proved by the entry of record made according to the provisions of this article, or other evidence; and such bonds may be sued on from time to time, in the name of any person aggrieved, until the whole amount of the liability, as determined by this section, is recovered.

§ 1788. Any party making a payment on any refunding

Rights of parties to such bonds among themselves.

bond, taken under this article, may recover against the parties to any other refunding bond, such an amount as shall be in the same proportion to the amount collected from the plaintiff, as the amount of money and value of the property delivered on both bonds bears to the amount of money or property delivered on the bond of the defendant.

The order of the court after eighteen months protects the representative.

§ 1789. The order of the court made after eighteen months from the grant of letters, on the application of the legatee, or person entitled to distribution, is a protection to the executor or administrator, to the extent of the amount or value of the legacy or share ordered to be paid or distributed.

Payment of a debt after eighteen months protects representative as to debts not presented.

§ 1790. The payment of any debt against the estate, by the executor or administrator, after eighteen months from the grant of letters, protects him to the extent of the payment, from liability on any other debt against such estate, not presented at the time of such payment.

Interest deducted from debts not due and they may then be paid, &c.

§ 1791. Any debt not due, presented, may be paid by an executor or administrator after eighteen months from the grant of letters, and the provisions of the preceding section include such debts; but such payment must not be made, unless the creditor accept, in discharge of such debt, such an amount as, with interest from the day of payment to the day when such debt is due, would make the amount thereof.

Orders of distribution; by whom to be executed, &c.

§ 1792. All orders of distribution must be directed to five disinterested persons, appointed by the court; must specify the property to be divided, the persons, and their respective shares; and must require them to return their proceedings, on a day specified in such order.

Distribution to be made and returned.

§ 1793. The persons therein named, or a majority, must proceed to make distribution according to such order; having first taken an oath to make such distribution fairly and impartially if the same can be made; and must return their proceedings in writing, signed by them to the court by the day specified in such order.

Proceedings when property cannot be divided without a sale.

§ 1794. If the property cannot be divided equitably, without a sale of all or some portion thereof, the commissioners must so report.

Exceptions to the commissioners' report.

§ 1795. Any person may file exceptions to the report, within thirty days after the day appointed for return; or if returned at any time thereafter, within thirty days after the return.

The distribution may be set aside for cause, else confirmed and a sale if necessary ordered.

§ 1796. The court, for cause shown on such exceptions or otherwise, may set aside such distribution and direct another distribution; or, if the same is just, may confirm it; or if it appears from such report that the property cannot be equitably divided without a sale of all, or some portion thereof, it may direct a sale of all or any portion of the personal property.

Sale; how advertised and made.

§ 1797. Such a sale must be advertised, and made, as personal property for the payment of debts.

On confirmation the property to be delivered.

§ 1798. Upon the confirmation of any order of distribution, the executor or administrator must deliver the property to the persons entitled thereto.

§ 1799. Any judgments, or claims, in favor of the estate, which are not collected at the time of final distribution, may be divided amongst the persons entitled, on final distribution, or if such division cannot be equitably made, may be sold as other personal property. Judgments or claims may be divided or sold as other property.

§ 1800. The executor or administrator must assign such judgment or claim to the distributee, legatee, or purchaser, as the case may be; and such person is entitled to collect the same, by suit, or otherwise. Assignment of the judgments or claims.

ARTICLE II.

Of rendering accounts and making settlement.

Sec.	
1801.	Settlements to be made annually, or oftener, when required.
1802.	Manner of making settlements: accounts and vouchers, and statement of the heirs, &c., to be filed.
1803.	Guardians appointed on the part of infants, &c.
1804.	Damages for failure to file a statement of the heirs, &c.
1805. 1806.	Notice of the settlement to be advertised; contents of the notice.
1807.	Notice by publication may be waived.
1808.	The account to be then audited.
1809. 1810.	Proof of credits required; how made.
1811.	Representative may prove items of twenty dollars by oath.
1812.	Any part of the account may be contested.
1813.	Representative chargeable with interest, or profits, on funds, &c.
1814.	Costs of a contest of the account; by whom paid.
1815.	Any item may be withdrawn, on payment of costs.
1816.	Accounts to be stated and recorded.
1817.	Attachment to compel a settlement; and an account may be stated against the absent representative.
1818.	Citation to appear and file an account.
1819.	The accounts so stated passed, if he makes default.
1820.	On appearing, and filing an account and vouchers before final settlement, such decree set aside.
1821.	Final settlement made in eighteen months, if the debts are paid.
1822.	Order of distribution then made, and when confirmed, to be enforced by a decree.
1823.	Annual settlements presumed correct, but may be examined again.
1824.	Representatives may then be charged with other items.
1825.	Compensation of representatives.
1826.	Disposition of the personal property of an inhabitant of another country governed by the law of such country.
1827.	Such estate may be distributed here, or delivered to the administrator in the country of the deceased.

§ 1801. Every executor or administrator must make annual settlements of his administration; and may, when necessary for the interests of the estate, be required to make a settlement at any time. Settlements to be made annually or oftener if required.

§ 1802. In making settlements of administration, the executor or administrator must proceed as follows: Manner of making settlements.

1. He must make out an account between himself and the estate he represents, charging himself with all the assets of the deceased which have come into his possession, except Account to be filed and sworn to.

the lands; and crediting himself with all the credits he is by law entitled to; which account, verified by his oath, must be filed with the judge of probate having jurisdiction.

Vouchers to be filed with the account.

2. With such account he must also file the vouchers, and written evidence in his possession, which he relies on to sustain the credit side of such account.

Statement on oath of the names of the heirs and legatees, whether married women, infants, or lunatics, &c.

3. He must, at the same time, file a statement on oath, of the names of the heirs and legatees of such estate, specifying particularly which are under the age of twenty-one years; and if any of them are married women, or persons of unsound mind, it must be stated; but if the names, ages, or condition of such heirs or legatees are unknown, and they reside out of the state, they may be made parties, as unknown heirs.

Infants and lunatics to have guardians.

§ 1803. The court must appoint a competent person to represent the interest of the minors, and persons of unsound mind, interested in such settlement.

Damages for failure to file such statement.

§ 1804. If such statement is not filed, the executor or administrator, and his securities, are liable for all damages arising therefrom.

Notice given by advertisement of the day fixed for a settlement.

§ 1805. Upon the filing of such account, vouchers, evidence, and statement, the judge of probate must appoint a day for such statement, and must give notice of the same by publication in some paper published in the county, for three successive weeks; or, if none is published therein, by posting such notice at the court house, and three other public places in such county, for the same length of time.

Contents of the notice.

§ 1806. Such notice must state the name of the executor or administrator; the name of the deceased; the day appointed for settlement; and if the settlement is proposed to be final, it must be so stated.

On waiver of publication, notice given by posting.

§ 1807. If the heirs or legatees are of age, and waive publication in a newspaper, notice must in such case be given, by posting the same at the court house door.

Account then audited.

§ 1808. On the day appointed, or on any other day to which the settlement is continued, the court must proceed to examine and audit the account.

Proof of credits by the representative.

§ 1809. On such auditing, the executor or administrator must produce satisfactory evidence of the correctness of each item on the credit side of the account.

How made.

§ 1810. Such proof may be made by the affidavit, or oral examination of witnesses, or by any other legal ovidence.

Items of twenty dollars proved by oath of representative.

§ 1811. When an item does not exceed twenty dollars, and the correctness of the same is known to the executor or administrator, it may be established by his own oath, as also the payment of the same by him.

Any part of the account may be contested.

§ 1812. Any person interested may appear, and contest any item of the account, and examine the executor or administrator, or any witness in relation thereto; or may introduce written evidence, taken on interrogatories; the adverse party being served with a copy of the same, ten days before a commission issues.

§ 1813. If any executor or administrator uses the funds of

the estate for his own benefit, he is accountable for any profit made thereon, or legal interest; and in making their returns, must state the sum so used, the time, and profit of the same, if over legal interest; or must expressly deny, on oath, that they have so used such funds; and any party interested may contest the same.

Liability of representative for interest or profits on funds used by him. Oath that he has not used such funds discharges him.

§ 1814. If the item, as charged by the executor or administrator, is reduced, or not allowed, the costs of the contest in relation to such item must be paid by the executor or administrator; otherwise, by the party contesting.

Cost of the contest; by whom paid.

§ 1815. The executor or administrator may before the decision of the court on any item, withdraw the same, but in such case must pay the costs of the contest as to such item.

Items may be withdrawn on paying costs.

§ 1816. On the auditing of the account, the court must state the same, render a decree passing the same as stated, and the same must be recorded.

Account to be stated and recorded.

§ 1817. Any executor or administrator, after being required, by citation served on him, to file his account, vouchers, and to make a settlement, may be compelled by attachment, or the judge of probate may proceed to state the account against him, charging him with such amounts as have come to his hands.

After citation attachment to compel settlement. An account stated if representative fail to appear

§ 1818. After stating such account, he must issue a citation to such executor or administrator, to appear on a day therein named, and file his account and vouchers for settlement, or that the account so stated will be passed.

Citation to appear and file an account.

§ 1819. If, on such citation being served ten days before the day stated therein, the executor or administrator fails to appear and file his account and vouchers for settlement, as required by law, the court must proceed to pass the account as stated, and render a decree thereon.

Account passed on failure to appear after such citation.

§ 1820. If, however, the executor or administrator, at any time before final settlement, appears and files his accounts and vouchers for settlement, and pays such costs as have accrued upon the proceedings under the last three sections, the court may set aside such decree, and proceed as if none had been rendered.

On appearing and filing accounts and vouchers, the decree may be set aside.

§ 1821. A final settlement may be made at any time after eighteen months from the grant of letters, if the debts are all paid, and the condition of the estate, in other respects, will admit of it.

Final settlement made in eighteen months if the debts are paid, &c.

§ 1822. On the final settlement of an estate, the court may make such orders of distribution as may be necessary; and on the confirmation of the same, may render a decree thereon, and the property must be delivered according to such decree; or if there is money only to be divided, it may render a decree in favor of each distributee entitled to the same, for his distributive share, against the executor or administrator.

Order of distribution to be made on final settlement, and when confirmed enforced by decree, &c.

§ 1823. Upon the final settlement, any item of account included in any previous settlement may be re-examined; but the allowance in such previous settlement, is presumptive evidence of the correctness of such item.

On final settlement previous settlements presumed correct, but may be re-examined.

Representative may then be charged with other items, on proof.

§ 1824. Upon such final settlement, any person contesting may also show, that the executor or administrator has failed to charge himself, or to account for all the assets of the deceased received by him; or that he has failed to collect the same, or any portion of the same; or that, by an abuse of, or failure to discharge his trust, such assets, or any portion of the same, have been depreciated, injured or destroyed.

Compensation of representatives.

§ 1825. Executors and administrators may be allowed such commissions on all receipts and disbursements by them as such, as may appear to the probate court a fair compensation for their trouble, risk, and responsibility, not to exceed two and one half per cent. on the receipts, and the same per centage on the disbursements; and the court may also allow actual expenses, and for special or extraordinary services, such compensation as is just.

Personal estate of inhabitants of other states be disposed of as directed by will or by the law of decedent's country.

§ 1826. When administration is taken out, in this state, on the estate of any person who, at the time of his death, was an inhabitant of any other state or country, his personal estate, after the payment of his debts, and charges on the estate, must be disposed of according to his last will, if probated in this state; and if no such will is probated, according to the law of the state or country of which he was an inhabitant.

On final settlement the estate may be distributed here or delivered to administrator or executor in decedent's country.

§ 1827. Upon the settlement of such an estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate may be distributed and disposed of according to the provisions of the preceding section; or it may be transmitted or paid over to the executor or administrator of the state or country where the deceased had his domicil.

CHAPTER VII.

PROCEEDINGS AS TO INSOLVENT ESTATES.

SEC.
1828. Order of payment of the debts of an insolvent estate.
1829. Report of insolvency, when and by whom to be made,
1830. Statement to be filed with the report, its contents.
1831. Report and statement to be sworn to.
1832. } Notice of the report given, ques-
1833. } tion tried.
1834. } When tried by a jury; if judg-
1835. } ment is against the report, it is set aside, and the representative pays the costs.
1836. Costs, how paid when the report is confirmed.
1837. But one issue must be made.
1838. When the report is sustained, the estate is declared insolvent, &c.; a day fixed for the settlement.
1839. Notice to be given of day fixed for the settlement.
1840. The creditors then nominate an administrator.
1841. } Manner of voting; right to vote,
1842. } how shown, &c.
1843. } Plurality of votes nominates;
1844. } vacancy, how filled.
1845. }
1846. An appointment revokes the former letters.

SEC.
1847. All claims barred if not filed within nine months; affidavit on filing a claim.
1848. Infants, lunatics, &c., allowed a longer time.
1849. Oath, how certified in the sister states.
1850 How in other foreign countries.
1851. Day of filing to be indorsed, and receipt given.
1852. } Docket of claims filed; if not
1853. } objected to, they are allowed.
1854. Objections, by whom and when made and tried, &c.
1855. The part found due must be allowed, costs.
1856. Settlement of such estates, when made.
1857. Rateable proportion paid on each allowed claim, &c., and other settlements made as money is collected.
SEC.
1858. Suits against the estate continued until the report of insolvency is acted on.
1859. Declaration of insolvency may be pleaded to all suits; other issues then tried.
1860. Judgment then certified to the probate court.
1861. When the decision on the report has been appealed from, the case must be continued.
1862. Claims not yet due may be presented and allowed.
1863. Claims allowed after a partial dividend, take a full share.
1864. Any creditor may sue those who have received a full dividend, for his proportion.
1865. } Payment to another creditor re-
1866. } duces recovery; costs in such suit.

Order of payment of debts due by deceased if insolvent.

§ 1828. When the real and personal property of the deceased is insufficient for the payment of the debts, the proceeds arising from the sale thereof must be distributed as directed by section 1741, in proportion to the amounts due to each class of creditors, in the order in such section specified.

Estates; when reported insolvent and by whom.

§ 1829. Whenever the executor or administrator of any estate is satisfied that the property of the estate is insufficient to pay its debts, he must file with the judge of the court having jurisdiction of the estate, a report in writing that such estate is, to the best of his knowledge and belief, insolvent.

Statement to be filed with the report: 1. Of personal property.

§ 1830. He must file with such report:

1. A statement of all the goods and chattels, evidences of debt and other personal property, with the estimated value of each, and the amount of money belonging to such estate.

2. Of the real estate.

2. A full statement of the real property of the deceased, or any interest therein; the local situation of such property, and the estimated value thereof.

3. Of claims against the estate.

3. A full statement of the claims against the estate, which have come to his knowledge; the character and amount of each claim, and the name and residence of each creditor, if known.

Report and statement to be sworn to.

§ 1831. Such report and statement must be accompanied by the affidavit of the executor or administrator, to the effect that the report and statements are correct, to the best of his knowledge, information, and belief.

Notice of the report to be given and a day fixed for hearing it.

§ 1832. The judge of probate, on the filing of such report and statements, must appoint a day, not less than thirty or more than sixty days therefrom, to hear and determine the same; and must give notice, to the creditors of the estate, of the filing of the report, and the day appointed to hear and determine the same, by publication in some newspaper published at or nearest to the court house, for such time as he may direct, not exceeding six successive weeks; by posting notice on the court house door for the same length of time;

and the forwarding notices by mail to all creditors whose residence is known.

Trial of the question.

§ 1833. Upon the day appointed to hear and determine such report, or on any other day to which the same is continued, the court must proceed to hear and determine the same.

Issue to try the insolvency; when by jury.

§ 1834. Any creditor may make an issue as to the correctness of such report, by denying, in writing, that the estate is insolvent, which issue must be tried by a jury, on the application of either party.

If against report, it is set aside, and representative pays costs.

§ 1835. If such issue is decided against the executor or administrator, the report must be dismissed, and execution for costs may issue against him and his securities.

Costs when the report is sustained.

§ 1836. If the issue is decided in his favor, costs must be paid by the contesting creditor, or out of the estate, as the court may direct.

But one issue must be made.

§ 1837. But one issue must be made, but any number of the creditors may join therein, at any time before the determination thereof.

If the report is sustained the estate declared insolvent, &c.

§ 1838. If no creditor contests the correctness of the report, or if the issue is decided against him, the court must declare the estate insolvent, and must make an order for the executor or administrator, on a day therein named, not less than thirty or more than sixty days therefrom, to appear and make a settlement of his accounts.

Notice given of such order and day for settlement.

§ 1839. Notice of such order, and of the day appointed for such settlement, must be given by the judge of probate, as is required by section 1832.

Creditors may then nominate administrator.

§ 1840. On the day appointed for such settlement, or at any day to which the same is continued, the creditors, present or represented, may nominate to the court any fit person, an inhabitant of this state, as administrator of the property, and of the rights and credits thereof unadministered.

Manner of voting by the creditors.

§ 1841. In making the nomination, each creditor, in person or represented, votes as follows:

1. On claims filed by any one creditor, not exceeding, in the aggregate, one thousand dollars; one vote for each hundred dollars.

2. On claims held by any one creditor, exceeding in the aggregate one thousand dollars, ten votes for the first thousand, and one for every additional five hundred dollars.

3. Every creditor is entitled to one vote, and no creditor to more than twenty.

Nomination to be made in presence of the court; mode of proving claims.

§ 1842. The nomination must be made in the presence, and under the direction of the court; and the amount of claims held by any creditor may be proved by affidavit, o in any other mode satisfactory to the court.

Plurality of votes nominates.

§ 1843. The person having a plurality of votes, must be appointed by the court administrator of the property, and rights, and credits unadministered.

§ 1844. Whenever a vacancy occurs in the office of such administrator, the court, on motion of any other creditor of

the estate, may order another meeting, and hold another election, and make the appointment of the person elected, in all respects, as upon the first meeting of creditors. Appointment to a vacancy in such administration.

§ 1845. If none of the creditors attend at the time appointed, or if, from any other cause, no appointment of such administrator is made, the court may, in its discretion, continue the former executor or administrator; or may appoint any fit person, or the general administrator of the county; or should there be none, the sheriff or coroner of the county, to administer the estate, according to the provisions of this chapter. Idem.

§ 1846. Whenever any administrator is appointed under the provisions of this chapter, any former grant of letters on the estate is thereby revoked; and the property of such estate is thereby vested in such administrator. An appointment revokes former letters, &c.

§ 1847. Every person having any claim against the estate so declared insolvent, must file the same in the office of the judge of probate, within nine months after such declaration, or after the same accrues, verified by the oath of the claimant, or some other person who knows the correctness of the claim, and that the same is due, or the same is forever barred. Claims against insolvent estates barred unless filed in nine months. Affidavit on filing claim.

§ 1848. The provisions of the preceding section do not apply to infants and persons of unsound mind, who are allowed nine months after the removal of their respective disabilities. Infants, &c., excepted.

§ 1849. When the claim is filed, verified by the oath of a person out of this state, but within the United States, the oath may be made before a notary public, justice of the peace, or any judge of a court of record, or a commissioner of this state; and when made before a justice of the peace, it must be certified that such officer was a justice of the peace, and that his attestation is genuine, by some judge of a court of record, or a commissioner of this state; when made before either of the other officers specified in this section, no other proof of the taking of such oath is necessary, than the certificate of such officer. Certificate; how made when the creditor filing a claim or the witness is in another state.

§ 1850. When such oath is taken out of the United States, it may be taken before any judge of a court of record, mayor, or chief magistrate of any county, city, borough, or town, notary public, or diplomatic, consular, or commercial agent of the United States; and no other proof of the taking of such oath is necessary, than the certificate of such officer. When oath is taken in foreign country.

§ 1851. The judge of probate must, when required, give a receipt for such claim to the claimant, his agent, or attorney, and must endorse on the claim the day when the same was filed, and sign his name thereto. Receipt given by judge for claims filed; day of filing endorsed, &c.

§ 1852. Such judge must keep a docket of all the claims thus filed, which must be at all times, during office hours, subject to the inspection of the administrator and creditors of the estate. Docket of claims filed.

§ 1853. If no opposition is made in the manner hereinafter provided, within twelve months after the time when the estate was declared insolvent, such claim must be allowed against the estate, without further proof. If not objected to, such claims be allowed.

Objections to claims filed; when and by whom made and how tried.

§ 1854. At any time within twelve months after the declaration of insolvency by the judge of probate, the administrator, or any creditor, may object to the allowance of any claim filed against the estate, by filing objections thereto in writing; and, thereupon, the court must cause an issue to be made up between the claimant and the administrator, or the contesting creditor, in the name of the administrator, in which issue the correctness of such claim must be tried as in an action of law against an administrator, if required; and if it is found for the claimant to the whole amount thereof, the same must be allowed, and such claimant recover his costs in relation to the trial of such issue; if against the claimant, the claim must be rejected, and the party contesting recovers his costs.

Costs in such cases.

If part only found due it must be allowed, costs.

§ 1855. If a part only of such claim is found to be due, it must be allowed for that amount, and the costs paid by either party, or in such proportions by either party, as the court may direct.

Settlement of insolvent estates; when made, &c.

§ 1856. Every executor, or administrator, of an insolvent estate, must make a settlement of his accounts as such, at such time as the court may appoint, not less than nine, or more than fifteen months from the time the estate is declared insolvent.

Debts then paid ratably.

§ 1857. At such settlement, the court must decree to each creditor, whose claim has been allowed as herein provided, his proportion of all moneys then found due from such executor, or administrator, reserving in his hands a ratable proportion of such moneys for such claims as may be then contested and undivided; and a similar settlement and distribution must be made at least every six months thereafter, at such times as the court may appoint, until the estate is finally settled and distributed.

Other settlements made every nine months.

Suits against representative continued until report of insolvency is disposed of.

§ 1858. During the progress of any suit against an executor, or administrator, he may show that such estate has been reported insolvent, and continue the cause until the final disposition of such report.

Representative may plead the declaration of insolvency.

§ 1859. The executor, or administrator, may also, at any time before judgment, plead specially, that the estate has been declared insolvent and in such case the other issues must be tried, and judgment rendered thereon.

Judgment then certified to the probate court.

§ 1860. If such judgment is for the plaintiff, and it is shown to the court that such estate has been declared insolvent, an order must be made to the effect, that no execution issue on such judgment, but that the same be certified to the proper probate court; and upon a certified copy of such judgment being filed, as a claim against the estate, it must be allowed with the costs against such estate, unless shown to have been obtained by collusion.

When the report has been appealed from, the case must be continued.

§ 1861. If an appeal has been taken on a contest as to the report of insolvency, the case must, on motion, be continued until such appeal is disposed of.

§ 1862. Any creditor whose debt is not due, may present

the same, as if due, and, thereupon must be considered as a creditor under this chapter; and is entitled to his dividend, or such an amount as, with the interest added from the time of payment to the maturity of the debt, would be equal to the amount thereof. Claims not due may be presented, &c.

§ 1863. Any creditor of an insolvent estate, whose claim is allowed, after a partial distribution, must be allowed out of the remaining assets of such estate, if sufficient, such a proportion as will give him his just dividend. Claims allowed after a partial distribution to take a full dividend.

§ 1864. Any creditor of an insolvent estate, whose claim is not barred, may sue any person who has received any dividend of such estate, and recover from him such an amount of the dividend he has received, as shall be in the same proportion thereto, as the claim of the plaintiff bears to the debts of the estate distributed, including the claim of the plaintiff. Any creditor whose claim is allowed may sue those who have taken dividends for his proportion.

§ 1865. But in such action, the defendant may reduce the recovery, by showing that such dividend has been reduced by the recovery, or payment of the claims of other creditors of such estate in the like proportion. Payment to another creditor reduces recovery.

§ 1866. In such action, the plaintiff must pay the costs, unless he proves he has exhibited his claim, and demanded of the defendant his proportion of the dividend received by him, before the commencement of the action. Costs in such cases.

CHAPTER VIII.

SALE OF LANDS FOR DISTRIBUTION.

SEC.		SEC.	
1867	When lands cannot be fairly divided, they are sold under an order from the court.	1872.	On proof of the facts stated in the application, an order for the sale granted, and the proof and order recorded. Sale, how made.
1868.	Application for such order, its contents, by whom made.	1873.	Widow's dower may be sold with the land, by her consent.
1869.	Parties in interest to be cited to appear on the day of trial.	1874) 1875)	Value of her dower; how fixed and paid.
1870,	Husbands of married women also cited.		
1871.	Publication as to non-residents.		

§ 1867. Lands of an estate may be sold by order of the probate court, having jurisdiction of the estate, when the same cannot be equitably divided amongst the heirs or devisees. Sold under an order of court when they cannot be fairly divided.

§ 1868. The application for that purpose must be made by the executor, or administrator; must describe the lands accurately; and give the names of the heirs, or devisees, and their places of residence; and such application must also state, if any, and which of such heirs, or devisees, are under the age of twenty-one years, or married women, or of unsound mind. Application for the order of sale; by whom made; its contents.

Proceedings to cite the parties in interest, and fix a day for the trial of the application.

§ 1869. The judge must appoint a day, not less than forty days from the time of making such application, for the hearing thereof; must appoint a proper person to represent the minors, or persons of unsound mind, if any there be; and must issue a citation to the heirs, or devisees of full age residing in this state, notifying them of the application, and the day appointed for hearing the same; which citation must be served on such heirs, or devisees, ten days before the day appointed for the hearing.

Husbands of married women also to be cited.

§ 1870. If any of the heirs or devisees are married women, the citation must be served on the husband, as well as the wife.

Publication as to non-residents.

§ 1871. If any of the heirs or devisees reside out of this state, such heirs may be brought into court, by publication, made in a newspaper published in the county in which the application is made; or if no paper is published in such county, then in the one published the nearest to the court house thereof.

When the facts stated in the application are proved, the proof must be recorded and the order of sale made.

§ 1872. The facts stated in the application must be proved by the deposition of disinterested witnesses, which must be filed of record; and on making such proof, the court may order a sale of the lands, which must be advertised and sold, on such terms as the court may direct, not exceeding a credit of twelve months; and the sale must be advertised, and conducted, and bonds, or notes, taken for the purchase money, if sold on a credit, with two sufficient securities; the sale confirmed, and titles made to the purchaser on the payment of the purchase money, in all respects, as upon a sale of lands by an executor, or administrator, under an order of the probate court, for the payment of debts.

Sale; how conducted.

With the widow's consent her dower may be sold with the land.

§ 1873. In all cases where, under the provisions of this title, the lands of a decedent can be ordered to be sold by the judge of probate, the widow may file in the office of the probate judge her written consent, that her dower interest in the land be sold, so as to vest in the purchaser the complete title; and thereupon, the probate judge must order that the widow's dower interest must be sold with the residue of the land.

Value of the dower; how fixed and paid.

§ 1874. When the sale is confirmed, the judge of probate, on the application of the widow, must make an order, that a fair equivalent for the dower interest be paid to her by the personal representative, when the purchase money is collected, the value of the dower interest to be ascertained by proof having regard to the age and health of the doweress.

Not be more than one-sixth of purchase money

§ 1875. The provisions of the preceding section must not be so construed as to allow the widow, in any case, more than one-sixth of the purchase money.

CHAPTER IX.

COMPELLING EXECUTORS AND ADMINISTRATORS, WHOSE AUTHORITY HAS CEASED, TO MAKE SETTLEMENT.

SEC.
1876. On resignation or removal, settlement to be made in a month.
1877. Decree for the balance against him.
1878. Attachment to compel a settlement, and an account stated against him.
1879. Notice of the account to be published.
1880. Proceedings on the final settlement of such accounts.
1881, 1882. Decree rendered on the account. Such proceedings no bar to other suits.

Settlement to be made in a month by a representative on his resignation or removal.

§ 1876. Whenever an executor, or administrator, is removed, resigns, or his letters are revoked, or his authority ceases from any cause, he must, within one month thereafter, file his account, vouchers, evidence, and statement of the heirs and legatees, as in case of other settlements; and upon the same being duly advertised as other settlements, his account must be audited, stated, and a decree rendered thereon.

Decree for the balance against him.

§ 1877. If there is any remaining, or succeeding executor, or administrator, on said estate, a decree must be rendered in his favor, for the amount found due on such settlement, or for the delivery of any personal property in the hands of the executor, or administrator, whose authority has ceased.

Attachment to compel a settlement.

Or account stated against him.

§ 1878. If such executor, or administrator, fails to make his settlement, as required by section 1876, the court may compel him by attachment, or may state the account against him from the materials in his office, or such other information as may be accessible to the court, charging him with such articles as may have come to his hands.

Notice of the account to be published, &c.

§ 1879. After stating such account and giving notice of the same by publication, as in case of other settlements, the court must proceed to examine the account, audit, and restate the same, if necessary.

Proceedings on final settlement of such account.

§ 1880. On the day appointed for auditing such account, any person may attend on the part of the executor, or administrator, and show that he is entitled to additional credits; or any person interested may attend and contest any item of such account, or in any previous account; or may show assets not accounted for; or that such executor, or administrator, has failed to collect the same, or any portion thereof, from want of due diligence; or that by any abuse, or failure to discharge his trust, such assets, or any portion of the same, have been injured, destroyed, or depreciated; and in case of such proof, the executor, or administrator, must be held to account therefor.

Decree on the stated account.

§ 1881. The court after stating such account, must render a decree thereon, in favor of the remaining or of any succeeding executor or administrator; or if the estate can be finally closed on such settlement, must render decrees, as on a final settlement thereof.

§ 1882. The proceedings under this article, do not prevent

These proceedings no bar to other suits.

any action by the remaining or succeeding executor or administrator, or by any other person entitled thereto, against such executor or administrator, for any property remaining in his hands, or other causes of action.

CHAPTER X.

OF THE PRESENTATION OF CLAIMS.

SEC.		SEC.	
1883.	All claims against estates barred if not presented in eighteen months.	1886.	Suits against the decedent, presented by revival against the representative.
1884.	Longer time allowed to infants, &c., and heirs of legatees.	1887.	On suit, if presentation is not proved, costs taxed against the plaintiff.
1885.	Presentation of claims, how made.		

All claims barred unless presented in eighteen months after accruing, or from time of grant of letters.

§ 1883. All claims against the estate of a deceased person, must be presented within eighteen months after the same have accrued, or within eighteen months after the grant of letters testamentary or of administration; and if not presented within that time, are forever barred.

Infants and lunatics allowed a longer time, also heirs, &c.

§ 1884. The provisions of the preceding section do not apply to minors, or persons of unsound mind, who are allowed eighteen months, after the removal of their respective disabilities, or to heirs or legatees, claiming as such.

Claims presented to representative or filed in court; if filed to be docketed.

§ 1885. The presentation may be made either to the executor or administrator, or by filing the claim or a statement thereof in the office of the judge of probate, in which letters were granted; in which case, the same must be docketed, with a note of the time of such presentation; and if required, a statement must be given by such judge, showing the time of presentation.

Suits against decedent presented by revival against the representative.

§ 1886. All actions pending against any person at the time of his death, which by law survive against his personal representatives, shall, if revived by notice, on such executor or administrator within eighteen months after the grant of letters, be considered as presented.

Costs against the plaintiff if he do not prove presentation of his claim.

§ 1887. In any action against an executor or administrator, commenced after the death of the testator or intestate, if the plaintiff fail to prove a presentation of the claim or demand, he must pay the costs of suit, although he may recover.

CHAPTER XI.

OF APPEALS.

SEC.
1888. Cases in which appeals may be taken.
1889. On the contest of a will in the circuit court, an appeal lies to the supreme court.
1890. Bills of exception in such cases.
1891. Bills of exception to be taken in other cases, before the judge of probate, and the appeal tried on them.
1892. If all the evidence is set out, the supreme court may direct what judgment shall be entered.
1893. In contest of wills, a complete transcript to be made out, and appeals tried on such transcript.
1894. Appeals from the circuit court to the supreme court.
1895. Bond and security given on an appeal from an order removing the representative.
1896. On affirmance, execution issues on the bond for costs.
1897. The bond is also a security to the estate.
1898. Security for costs, required in all appeal cases.
1899. Costs of the appeal, sometimes charged to the estate.

Appeals.

§ 1888. Appeals may be taken from the probate court, upon decrees made under the provisions of this title, to the supreme or circuit court, in the following cases only:

On contest of probate of a will.

1. On any contest as to the validity of a will under chapter second, of this title, in which case the appeal must be taken within thirty days after the determination of such contest.

On refusal to grant letters testamentary, or of administration.

2. On application, and claiming the right to execute a will, or to administer on an estate, when decided against the applicant on any other ground than the one specified in the fourth subdivision of section 1658, in which case the appeal must be taken within ten days after the determination of the court on the application.

On an order of removal of the representative.

3. Upon any judgment or order removing an executor or administrator, in which case the appeal must be taken within five days after such judgment or order.

On questions of payment of legacies or distributive shares.

4. By a legatee or person entitled to distribution, on the decision of the court, in proceedings instituted to compel the payment of a legacy or distributive share, at any time within six months after such decision.

On a final settlement.

5. After a final settlement upon any order, decision or decree, made on such settlement, or respecting any item or matter thereof, or on any previous settlement or item or matter thereof, within six months thereafter.

Upon an issue on a claim against an insolvent estate, &c.

6. Upon any issue as to the insolvency of an estate, and upon any issue as to an allowance of any claim against insolvent estates, in which case the appeal must be taken within thirty days after the determination of such issue.

Appeal from circuit court, on contest of a will, to supreme court.

§ 1889. Upon the contest of a will, removed from the probate into the circuit court for trial, an appeal lies to the supreme court, and must be taken within thirty days after the judgment.

Bills of exceptions in such cases.

§ 1890. In the cases provided for by the preceding section, a bill of exceptions may be tendered to the probate judge or to the circuit judge, trying the validity of a will,

specially setting forth the matters objected to, and the evidence in relation to the same, with such other matters as will present the point raised fully and fairly, before the appellate court, which, if correct, must be signed by the judge before the adjournment of court, unless both parties or their attorneys consent in writing to further time being given.

Copy of the bill to be made by the judge of probate and the appeal tried on it.

§ 1891. When an appeal is taken under any of the previous sections of this article, except a contest involving the validity of a will, the judge of probate must make out a copy of the bill of exceptions, which must be certified by him, and the appeal must be tried on such bill of exceptions, in the appellate court.

If all the evidence is set out the supreme court may direct what judgment shall be entered.

§ 1892. On any matter of evidence properly triable by the court, if it appear from the bill of exception that all the evidence in relation to the particular item or matter is set out in such bill, the appellate court may either affirm the judgment or reverse and direct what judgment shall be rendered, and such judgment must be so rendered in the court below.

Transcripts made in contest of wills.

§ 1893. In contest respecting the validity of a will, a transcript of the whole record must be made out, and the appeal is tried on such record.

Appeals from the circuit to the supreme court.

§ 1894. An appeal may be taken from the judgment of the circuit court, on an appeal brought to such court, under the provisions of this chapter, to the supreme court, within thirty days after such judgment.

Bonds and security on an appeal from an order of removal of the representative.

§ 1895. No appeal can be taken from an order of the probate court, removing an executor or administrator, unless the appellant give bond with at least two sufficient securities, payable to the judge of probate, and in an amount to be fixed by him, not less than the amount of his bond as executor or administrator, conditioned to prosecute the appeal to effect, and until the same is decided, faithfully to discharge his duties, as such executor or administrator.

On affirmance execution for costs on the bond.

§ 1896. If such appeal is decided against the appellant, execution for costs may issue against him, and the securities on such bond; their names being certified with the record to the appellate court.

The bond is also a security to the estate.

§ 1897. Such bond also stands as security for the faithful discharge of his duties as such executor or administrator, from the time the same is approved until the appeal is finally decided.

Security for costs given in all appeals.

1898. In all other cases in which an appeal is taken under the provisions of this chapter, the appellant, or some one for him, must give security for the costs of such appeal, to be approved by the judge of probate, or the clerk of the circuit court, as the case may be; and the names of such securities must be certified with the record to the appellate court: and if the appellant fails to prosecute his appeal, or the judgment is not reversed, or is rendered against him for a less amount, execution may issue against him and such security for the costs.

§ 1899. The costs of the appeal, when paid by an executor or administrator, is within the discretion of the probate judge, to allow as a charge against the estate. Costs may be allowed against estate by judge of probate.

CHAPTER XII.

MISCELLANEOUS PROVISIONS.

SEC.	
1900.	Slaves engaged in making a crop, to be retained until the crop is made.
1901.	The proceeds of the crop so made is assets to be administered, &c.
1902.	Property of the estate, when kept together, and how long.
1903.	Real estate to be cultivated in such cases.
1904.	Not kept together if forbid by the will.
1905.	Annual settlements in such cases.
1906.	Settlements to show the sum paid for each heir, &c.
1907.	Notice of settlements, &c., to the heirs and legatees.
1908.	Attachment to compel a settlement.
1909.	Estates not kept together if injurious to creditors or heirs and legatees.
1910.	Proceedings when the judge of probate is incompetent.
1911.	Papers, &c., removed to the register's office.
1912.	Records in such cases; process, &c.
1913.	Proceedings when the judge and register are both incompetent.
1914.	Proceedings on failure to execute, or return process from the register's office.
1915. 1916.	Errors in settlements corrected by suit in chancery.

§ 1900. On the death of any person, the slaves in his possession employed in making a crop, must be continued on the plantation in the possession of the decedent, at the time of his death, until the last day of December following, under the direction and control of the executor or administrator; and then delivered to those entitled thereto; or if the property of the decedent, duly administered. Slaves engaged in making a crop, to be worked on the plantation until the crop is made.

§ 1901. The crop made under the provisions of the preceding section, is assets in the hands of the executor or administrator, the expenses of the plantation being deducted therefrom. The crop when made is assets.

§ 1902. The court of probate may authorize the executor or administrator, on application made, and good cause shown, to keep the real and personal estate, or any portion of the same, together, for any length of time such court may deem advisable, not exceeding ten years.* Estates; when kept together and how long.

§ 1903. When such estate is kept together, the real estate may be cultivated, under the direction of the executor or administrator, but the dower of the widow must in all cases be reserved. Real estate cultivated in such cases.

§ 1904. The provisions of the two preceding sections must not be construed so as to conflict with the will of the testator. Only kept together when not forbid by the will.

§ 1905. Such executor or administrator must make annual settlements of such estate, as required by the provisions of Annual settlements of such estates.

*For investments of proceeds of estates so kept together, see note on p. 388.

Article two, Chapter six, of this title, and in such settlement must show how such estate has been managed, crop made, expenses incurred, and the disposition of all moneys received.

Settlements must show the sum paid for each heir.

§ 1906. Such settlement must also show the amounts appropriated and expended for each and every person entitled to any distribution from such estate.

Filing the accounts, &c., and notice of settlement.

§ 1907. The accounts and vouchers, evidence and settlement of the heirs and legatees, must be filed, and the same notice of such settlements given, and in the same manner, and may be contested, as annual settlements in other cases.

Settlements compelled by attachment, &c.

§ 1908. Such settlements may be compelled by attachment, or the judge may proceed in the same manner as when an executor or administrator, being cited to make a settlement under the provisions of Article two, Chapter six of this title, fails so to do.

Estates not be kept together to injury of creditors, heirs or legatees of full age.

§ 1909. The provisions of this chapter in relation to keeping estates together, must not be so construed as to affect the rights of creditors, or to prevent any legatee or distributee of such estate from receiving his proportion thereof, as he arrives at full age.

Proceedings when judge of probate is incompetent to try a cause.

§ 1910. If the judge of probate is incapacitated, under the provisions of section 560, from acting in relation to any matter embraced in this title, the register in chancery of the district in which the county of such probate judge is situated, is substituted in the place of such probate judge, with all the powers which are by law given to him, or to his court; the proceedings to be conducted in all respects as if in the court of probate, and appeals from the decisions of the register to lie, in the like cases, as from the probate court, and to the same courts.

Removal of papers into the office of the register.

§ 1911. All the original papers remaining in the court of probate must be removed in such case to the office of such register, sealed up under the seal of the judge of probate; and all records in relation to the same, duly certified by such judge, at the expense of the estate.

Records in such cases; how kept.

§ 1912. The records and proceedings are kept, and certified, when so removed, as the records of the court of chancery; and all writs of attachment and execution may be issued, and made returnable, to any day appointed by the register.

Process in such cases.

Proceedings when judge and register are both incompetent,

§ 1913. If the register and the judge of probate are both interested, the judge of probate of the nearest adjoiniug county must act, and the original papers and records must in such case be removed, and certified to such judge, as is provided in section 1911.

Proceedings on failure to return process from the register's office, &c.

§ 1914. The failing to return any execution issued by the register, under the provisions of section 1912, or for failing to make the money, or to pay over the money when collected thereon, the sheriff and his securities are liable to the same penalties and judgments as in the like cases in courts of probate; the proceedings to be instituted in the circuit court of the county in which such register's office is kept,

and a certified copy of the execution, and the returns thereon, are evidence to the same extent as if the original was produced; and the certificate of such register, that the execution was not returned, is presumptive evidence of such fact.

Bill in chancery to correct settlements; when to be filed, &c.

§ 1915. Where any error of law, or fact, has occurred in the settlement of any estate of a decedent, to the injury of any party, without any fault or neglect on his part, such party may correct such error by bill in chancery, within two years after the final settlement thereof: and the evidence filed in the court of probate, in relation to such settlement, must be received as evidence in the court of chancery, with such other evidence as may be adduced.

Infants and lunatics allowed a longer time.

§ 1916. The limitations of the preceding section do not extend to infants, or persons of unsound mind, who are allowed two years after the termination of their respective disabilities.

CHAPTER XIII.

GENERAL PROVISIONS AS TO RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

Sec.		Sec.	
1917.	Suits against representatives not to be commenced until six months after administration, &c.	1929.	Damages to real property, recovered by the representative.
1918.	Suits against them to be brought in the county in which letters are granted.	1930.	Judgments against decedents to be revived by suit.
1919.	Limits of the representative's liability.	1931.	Legacies sued for at law after eighteen months.
1920.	Resignation no bar to suits unless a final settlement is made.	1932.	Inventory when introduced as evidence may be explained by proof.
1921. 1922.	Mode of enforcing judgments, decrees, &c., against them.	1933.	Executor "de son tort" liable only to the representative.
1923.	On return of "no property" on an execution from the circuit court, execution issues against the representative personally.	1934.	Proceedings in suits, or to obtain the decedent's property, by a foreign administration, &c.
1924.	Suits by the special administrator, prosecuted by the representative.	1935.	He must show a compliance with such requirements, in all suits.
1925.	Suits by or against a representative prosecuted by his successor.	1936.	Amount of foreign administrator's bond.
1926.	The successor has execution on judgments obtained for the estate without "scire facias."	1937.	A payment made to him is a discharge.
1927.	The death of one representative does not abate a suit.	1938.	A representative may recover damages for a wrongful act causing the death of the decedent.
1928.	Administrators, &c., of those liable to an estate, are liable to the same extent.	1939.	Amount of damages limited; to be paid to the widow and children.
		1940.	Conviction or acquittal, no bar to such a suit.
		1941.	Corporations liable for their agents, in such cases.

Representatives not to be sued for six months.

§ 1917. No suit must be commenced against an executor or administrator, as such, until six months, and no judgment

rendered against him, as such, until eighteen months after the grant of letters testamentary, or of administration.

In what county to be sued, &c.

§ 1918. They are liable to be sued in all cases in their representative character, in the court of the county in which letters have been granted; and service of the summons may be made in any county in the state.

Limit of representative's liability.

§ 1919. No executor or administrator is liable except in the case provided for by section 1736, beyond the amount of assets which have come to his hands, or which have been lost, destroyed, wasted, injured, depreciated, or not collected, by want of diligence on his part, or an abuse of his trust.

Resignation; no defence unless he has made a final settlement, &c.

§ 1920. No executor or administrator can allege his resignation in defence to any action or proceeding, without an averment that he has settled the accounts of, and delivered over the assets of the estate, as required by law.

Mode of executing judgments, &c., against a representative.

§ 1921. All judgments, orders and decrees, for the payment of money, made by the probate court, against an executor or administrator, may be enforced by execution; for the delivery of personal property by attachment, or a special order to the sheriff requiring him to take such property, and deliver the same according to the judgment; to obtain possession of land, by a writ to the sheriff, against the executor or administrator, requiring him to put the heir or devisee in the possession of the same.

On return of "no property" execution issues against the sureties.

§ 1922. Whenever an execution for money issues against an executor or administrator, from the probate court, and the execution is returned, to any regular term of such court, "no property," by the sheriff of the county, an execution may issue against such executor or administrator, and his securities.

On return of an execution from the circuit court "no property," execution issues against representative, personally.

§ 1923. When any judgment is, or has been rendered in the circuit court, against any executor or administrator, as such, and an execution thereon has been returned "no property," by the sheriff, or other officer of the county in which such judgment was rendered, an execution may issue against the executor or administrator, personally, to be levied on his goods and chattels, lands and tenements.

Suits commenced by a special administrator prosecuted by his successor.

§ 1924. Suits commenced by a special administrator do not abate by the appointment of an executor or administrator in chief; but may be prosecuted by such executor or administrator.

Actions by or against the representative prosecuted for or against the successor.

§ 1925. When any action has been commenced by, or against the personal represenatives of the deceased, the same may be prosecuted, by or against any succeeding executor or administrator, who may be made parties, on motion.

The successor may have execution on judgments obtained by his predecessor without scire facias.

§ 1926. Any subsequent administrator, or administrator with the will annexed, may have execution, on any judgment recovered by any person who preceded him in the administration of the same estate, without reviving the same, or without proceeding to notify the defendant in such judgment.

Death of one representa-

§ 1927. If any one of two or more executors or administrators, against whom a suit is pending, die during the pend-

ency of the suit, it does not abate, but may be continued against the survivor or survivors on suggesting such death on the record. tive does not abate a suit.

§ 1928. The executors or administrators of every person, who as executor or otherwise has wasted or converted to his own use, any assets of a deceased person, are liable in the same manner as if their testator or intestate was living. Administrators, &c., of those who were liable to an estate are liable to same extent.

§ 1929. All proceedings to ascertain damages done to real property, survive to the executors and administrators. Damages to real property survive to representative.

§ 1930. When a judgment has been rendered against the decedent, before his death, no execution can issue thereon against the personal representatives, except in the case provided for in section 2459, nor can the judgment be revived against them except by suit on the judgment. Judgments against decedent, how enforced against representative.

§ 1931. Any legatee, after eighteen months from the grant of letters testamentary or of administration with the will annexed, may sue at law and recover his legacy, upon proof that the executor assented to the same. Legatee may after eighteen months sue at law for legacy.

§ 1932. In an action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, comes in issue and the inventory of the property of the deceased filed by them is given in evidence, the same may be repelled by evidence: If inventory is introduced as evidence, it may be explained by proof.

1. That any property has been omitted in such inventory, or was not returned therein at its full value.

2. That such property has perished or been lost, without the fault of such executors or administrators, or that it has been fairly sold, according to law, at a less price than the value so returned; or that since the return of the inventory such property has deteriorated or increased in value, and in such action the defendants cannot be charged for any thing, in action specified in the inventory, unless it appear that they were or might have been collected with due diligence. Proof allowed in such cases.

§ 1933. No person is liable to an action as executor of his own wrong, for having taken, received or interfered with the property of a deceased person; but is responsible to the executor or administrator for the value of all the property so taken or received, and for all damages caused by his act to the estate of the deceased; but the provisions of this section must not be construed so as to prevent any creditor from maintaining a suit against any one in possession of property fraudulently transferred by the intestate or testator. Executor "de son tort" only liable to the representative.

§ 1934. Any executor or administrator who has obtained letters testamentary or of administration, on the estate of a person who was not, at the time of his death, an inhabitant of this state, in any other of the United States, (no letters testamentary or of administration having been granted in this state,) may maintain suits and recover or receive property in this state: Actions, how maintained, or property recovered by a foreign administrator.

1. By recording at any time before judgment, or the receipt of the property, a copy of his letters, duly authenticated

according to the laws of the United States, in the office of the judge of probate of the county in which such suit is brought or property received.

2. Giving bond, with at least two good and sufficient securities, payable to and approved by the judge of probate of such county, in such amount as he may prescribe, to be determined with reference to the amount to be recovered or received, and conditioned to faithfully administer such recovery or property according to law.

The plaintiff must prove a compliance with such requirements.

§ 1935. It is necessary that the plaintiff before a judgment is rendered, should prove to the court that he has complied in all respects with the provisions of the preceding section, and failing so to do he cannot recover.

Amount of the bonds; how determined.

§ 1936. The judge of probate in determining the amount of the bond, may examine such executor or administrator on oath, and such bond when given stands as security on its condition being broken, for any person injured thereby.

Delivery of property on payment of the judgment amounts to a discharge, &c.

§ 1937. A delivery of property or a judgment recovered under the provisions of section 1934, is a protection to the defendant or person delivering the property to the extent of such judgment, or value of such property.

Wrongful act causing death may be sued for by the representative.

§ 1938. When the death of a person is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action against the latter at any time within one year thereafter, if the former could have maintained an action against the latter, for the same act or omission, had he lived.

Amount of the damages limited.

§ 1939. The damages recovered in such action cannot exceed three years' income of the deceased, and in no case exceed three thousand dollars. The amount recovered is

To whom to be paid.

for the benefit of the widow; if there be none, then for the benefit of the child or children; if there be none, then to be distributed as other personal property amongst the next kin of the deceased.

Conviction or acquittal no bar to such a suit.

§ 1940. The action may be maintained notwithstanding the defendant may have been prosecuted by the state and convicted or acquitted of the offence charged.

Corporations liable for their acts in such cases.

§ 1941. If such death is caused by the wrongful act, omission or culpable negligence of any officer or agent of any chartered company or private association of persons, such company or association are responsible for damages, and an action may be maintained against them as provided in the preceding sections.

Title 5.

THE DOMESTIC RELATIONS.

CHAPTER 1. Husband and wife.
" 2. Legitimating and adopting children.
" 3. Guardian and ward.
" 4. Master and slave.

CHAPTER I.

HUSBAND AND WIFE.

ARTICLE 1. Marriage.
" 2. Divorce and alimony.
" 3. Separate estate of the wife.
" 4. Provisions for the protection of married women and their families.
" 5. Voluntary separation of man and wife.

ARTICLE I.

Marriage.

SEC.
1942. Incestuous marriages forbid.
1943. Marriages between illegitimate relatives, also incestuous.
1944. Age required to give validity to a marriage.
1945. On conviction of incest, the marriage annulled, but the issue not illegitimate.
1946. Marriages, by whom solemnized, &c.
1947. Solemnized according to their rites, &c., by a pastor of any religious society.
1948 Marriages of quakers, according to their rites, valid.
1949. Marriages not to be solemnized except by license.
1950. Consent of parents, &c., when required; bond given on obtaining license.

SEC.
1951, 1952. Book for the registry of licenses to be kept, and marriage certificate recorded with the license.
1953. Penalty for issuing licenses improperly.
1954. Penalty for failure to record a license.
1955. Penalty for marrying parties without a license.
1956. Penalty for marrying parties under age, &c.; for marrying a white to a negro.
1957. Certificates of marriage to be returned, &c.
1958, 1959. Fees of judge of probate. Fees for marrying.
1960. Solicitor to be notified of offences under this article.

Incestuous marriages.

§ 1942. The son must not marry his mother, or step-mother, his half-sister, or the sister of his father, or mother, or the widow of his uncle. The brother must not marry his sister, or the daughter of his brother, or sister. The father must not marry his daughter, or grand-daughter, or the widow of his son. No man shall marry the daughter of his wife, or the daughter of the son, or daughter of his wife; and all such marriages are hereby declared incestuous.

Illegitimate relations also included in prohibition.

§ 1943. The provisions of the preceding section apply to illegitimate, as well as to legitimate children, and other relations.

Certain infants incapable of contracting marriage.

§ 1944. A male under the age of seventeen, and a female under the age of fourteen years, are incapable of contracting marriage.

On a conviction of incest the marriage to be declared void.

§ 1945. After a conviction for incest, for marrying within the prohibited degrees, the circuit court must declare such marriage null and void, and may require the parties to enter into a recognizance, with sufficient sureties, that they will not thereafter cohabit. The issue of such marriage, before the same is annulled, shall not be deemed illegitimate.

Children then born not illegitimate, &c.

Marriages; how and by whom solemnized.

§ 1946. Marriages may be solemnized between free white persons, or between free persons of color, by any licensed minister of the Gospel, in regular communion with the christian church, or society of which he is a member; by a judge of the supreme or circuit court, within the state; or by the judge of probate, or any justice of the peace, within their respective counties.

By pastors of religious societies according to their rules, &c.

§ 1947. Also by the pastor of any religious society, according to the rules ordained, or custom established by such society; and the clerk, or keeper of the minutes of such society, must keep a register, and enter therein a particular account of all marriages solemnized by the society; which register, or a sworn copy thereof, is presumptive evidence of the fact.

Register to be kept.

Marriages of quakers, &c.

§ 1948. The people called menonists, or quakers, or any other christian society, having similar rules, or regulations, may solemnize marriage according to their forms, by the consent of the parties, published, and declared before the congregation assembled for public worship.

Marriages not to be solemnized without license.

§ 1949. No marriage shall be solemnized without a license, to be issued by the judge of probate of the county in which the female resides; which license is an authority to any one qualified to solemnize marriage, to join together in matrimony the persons therein named.

Consent of parents, when required before grant of license.

§ 1950. If the male intending to marry be under twenty-one, and the female under eighteen years of age, and have not had a former wife, or husband, the judge of probate must require the consent of the parents, or guardians of such minor to the marriage, to be given, either personally, or in writing; and if the latter, the execution thereof must be proven. The judge of probate must also require a bond to be executed, in the penal sum of two hundred dollars, payable to the state of Alabama, with condition to be void, if there is no lawful cause why such marriage should not be celebrated.

Bond to be given.

Book of record of licenses.

§ 1951. The judge of probate must keep a book, in which is to be registered all licenses issued by him, and must state whether the parties, or either of them, were of the age specified in the preceding section. If not, he must also state whether either of them had been previously married, or if consent had been given to the marriage by the parent or guardian. If such consent was in writing, he must transcribe it on the same page on which he records the license, and the record so made, or a certified copy thereof, is presumptive evidence of the facts.

§ 1952. All persons, or religious societies, solemnizing

marriage in virtue of a license, or according to their peculiar forms, must, within one month thereafter, certify the fact in writing to the judge of probate, setting forth the names of the parties, and the time and place of the celebration thereof; which certificate must be recorded in the book kept for the registry of licenses, and a certified copy thereof is presumptive evidence of the fact. Certificate of marriage to be registered in the book of licenses.

§ 1953. A judge of probate issuing a license to marry, contrary to the provisions of this article, is guilty of a misdemeanor, and forfeits five hundred dollars; one half to the state, and the other half to the use of any person who may sue for the same. Penalty for improperly issuing a license.

§ 1954. A judge of probate failing for five days after issued by him, to record a license to marry, or failing for five days to record the manner of the consent to the marriage, where the parties are under the age specified in section 1950, not having been previously married, or failing for five days after the receipt thereof to record the certificate of the celebration of the marriage, is guilty of a misdemeanor. Penalty for failure to record license.

§ 1955. Any judge, minister of the Gospel, or justice of the peace, who joins persons in marriage without a license as required by this article, or who goes out of the state and marries persons, one or both of whom reside in this state, without such license, or a license from the state in which the marriage is celebrated, is guilty of a misdemeanor, and forfeits one thousand dollars; one half to the use of the state, and the other half to the use of any person who may sue for the same. Penalty for marrying parties without license.

§ 1956. Any person solemnizing the rites of matrimony, with the knowledge that either of the parties is under the age of legal consent, or within the prohibited degrees; or when one of the parties is a negro and the other a white person, is guilty of a misdemeanor, and, on conviction, must be fined not less than one thousand dollars. Penalty for marrying parties not of the proper age, or a white to a negro.

§ 1957. All judges, ministers of the Gospel, or justices of the peace, uniting together persons in matrimony, and the clerks, or keepers of the minutes of all religious societies, celebrating marriage by the consent of the parties, before the congregation, failing to return a certificate thereof to the judge of probate, as required by section 1952, are guilty of a misdemeanor. Certificates of marriage to be returned.

§ 1958. The judge of probate is entitled to two dollars for issuing and recording the license, together with the consent to the marriage, and the certificate of its celebration. Fees of judge of probate.

§ 1959. Any judge, justice of the peace, or licensed minister of the Gospel, celebrating the rite of matrimony, is entitled to two dollars. Fee for marrying.

§ 1960. It is the duty of the probate judge to give notice to the solicitor of the circuit court, of all omissions to perform any of the the duties required by this article. Judge of probate to give solicitor notice of offences under this article.

ARTICLE II.

Divorce and Alimony.

Sec.	
1961.	Courts of chancery decree divorces from the bonds of matrimony for certain causes.
1962.	Also to the husband, when the wife is pregnant at the time of marriage.
1963.	In case of cruelty by the husband to the wife.
1964, 1965	Mode of proceeding in divorce suits; answers not sworn to, and held only as pleadings, if sworn to.
1966.	Cases in which divorces are to be refused.
1967, 1968	On bill filed for abandonment, three years residence to be proved. In what court the bill must be filed.
1969.	If defendant is a non-resident, a year's residence must be proved by the plaintiff.
1970.	Allowance to the wife pending the suit.
1971.	Allowance to the wife, on decree of divorce.
1972.	Allowance more liberal, when the decree is in favor of the wife.
1973.	If the decree is against the wife, the allowance to be moderate.
1974.	Divorce on account of adultery, bars the wife's dower.
1975.	A divorce for pregnancy of the wife, bastardizes the issue.
1976.	A divorce takes from the husband the control of his wife's separate estate.
1977.	Custody of the children, on a decree of divorce.
1978.	Transcript of the record to be sent to the speaker of the house of representatives.
1979.	Causes of divorce from bed and board, &c.
1980.	Proceedings in such cases.

Courts of chancery decree divorces "a vinculo."

§ 1961. The court of chancery has power to divorce persons from the bonds of matrimony, upon bill filed in chancery by the aggrieved party, for the causes following:

For impotence.

1. In favor of either party, when the other was, at the time of the marriage, physically and incurably incapacitated from entering into the marriage state.

Adultery.

2. For adultery.

Abandonment. 17 Ala., 250; 15 Ala., 779.

3. For voluntary abandonment from bed and board, for three years next preceding the filing of the bill.

Imprisonment in the penitentiary for seven years.

4. Imprisonment in the penitentiary of this, or any other state, for two years, the sentence being for the term of seven years or longer.

If the wife is pregnant when married.

§ 1962. In favor of the husband, when the wife was pregnant at the time of the marriage, without his knowledge or agency.

In case of cruelty by husband. 10 Ala., 527; 11 Ala., 620.

§ 1963. In favor of the wife, when the husband has committed actual violence on her person, attended with danger to life, or health, or when, from his conduct, there is reasonable apprehension of such violence.

Mode of proceeding in such suits.

§ 1964. The proceeding must in all respects be conducted as other suits in chancery, except as herein otherwise directed. The cause for which the divorce is sought, must be alleged in the bill, to which the other party must be made defendant; and if a non-resident, publication made as in other chancery suits.

Answer not sworn to, and held only as a pleading even if sworn to.

§ 1965. The defendant is not required to verify the answer by oath; and whether sworn to or not, it is not evidence in the cause, and can have no other effect than to put in issue the allegations of the bill.

Cases when divorces are forbid.

§ 1966. No decree can be rendered on the confession of the parties, or either of them; nor if it appear that adultery was committed by either, with the consent of the other, for the purpose of obtaining a divorce; nor where both parties have committed adultery; nor where there has been a condonation of adultery by the admission of the offending party to conjugal embraces, after knowledge of the commission of the crime; nor unless the suit is brought within one year after the discovery of the act charged; nor when the husband knew of, or connived at, the adultery of the wife.

Bill on account of abandonment not considered unless the party filing has been resident three years bona fide.

§ 1967. No bill can be filed for a divorce, on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has bona fide been a resident of this state for three years next before the filing of the bill; which must be alleged in the bill and proved.

Bills; where filed.

§ 1968. Bills for divorce must be filed in the chancery district in which the defendant resides. If the defendant is a non-resident, then in the district in which the other party to the marriage resides.

If the defendant is a non-resident the plaintiff must have resided here a year.

§ 1969. When the defendant is a non-resident, the other party to the marriage must have been a bona fide resident of this state for one year, next before the filing of the bill; which must be alleged in the bill and proved.

Allowance to the wife pending the suit.

§ 1970. Pending a suit for divorce, the court must make an allowance for the support of the wife, out of the estate of the husband, suitable to his estate, and the condition in life of the parties.

Allowance out of husband's estate when decreed the wife on a divorce. 11 Ala., 63.

§ 1971. If the wife has no separate estate, or if it be insufficient for her maintenance, the chancellor, upon granting a divorce, must decree the wife an allowance out of the estate of the husband, taking into consideration the value thereof, and the condition of his family.

If the wife succeed the allowance to be made liberally.

§ 1972. If the divorce is in favor of the wife for the misconduct of the husband, the allowance must be as liberal as the estate of the husband will permit; regard being had to the condition of his family, and to all the circumstances of the case.

If decree is against wife allowance be moderate.

§ 1973. If in favor of the husband, for the misconduct of the wife, the allowance must be regulated by the ability of the husband, and the nature of the misconduct of the wife.

Divorce for adultery bars the wife's dower.

§ 1974. A divorce for the adultery of the wife, bars her of her dower, and of any distributive share in the personal estate of her husband.

Issue bastardized by divorce for pregnancy of the wife.

§ 1975. When a divorce is granted the husband, from the pregnancy of the wife at the time of the marriage, the issue are thereby bastardized.

A divorce takes away control of the wife's estate.

§ 1976. A divorce deprives the husband of all control over the separate estate of his wife.

Disposition of the children on grant of a divorce.

§ 1977. Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper; having regard to the moral character and prudence of the

parents, the age and sex of the children; and pending the suit, may make such orders in respect to the custody of the children as their safety and well being may require.

On divorce a transcript to be sent to the speaker of house of representatives, &c.

§ 1978. When a decree is rendered for a divorce, it is the duty of the register, on the application of the complainant, to make and certify a complete copy of the records; which must be sealed up and directed to the speaker of the house of representatives, by whom it is to be presented to the house for its action, at that session, according to the provisions of the constitution.

Causes of divorce from bed and board.

§ 1979. The chancellor may decree a divorce from bed and board, for cruelty, in either of the parties, or for any cause which would justify a decree from the bonds of matrimony, if the party applying therefor desires only a divorce from bed and board; which decree is final between the parties, without the sanction of the legislature.

Proceedings in such cases.

§ 1980. The proceedings in such cases are the same, in all respects, and the court has the same power to make an allowance to the wife, out of the estate of the husband, and provide for the custody and education of the children of the marriage, as provided in this article for divorces from the bonds of matrimony.

ARTICLE III.

Separate estate of the wife.

Sec.		Sec.	
1981.	Husband not liable for the debts of the wife before marriage; she is liable, and may be sued alone.	1989.	Married women may make wills, &c.
1982.	All the wife's property is secured to her separate use.	1990.	Husband's distributive share of the wife's estate.
1983.	The husband is a trustee for the wife, and enjoys the profits of her estate, but they are not liable for his debts.	1991, 1992	Wife having a separate estate, excluded from dower, &c., to the extent of such estate.
1984.	Mode of selling and conveying the wife's property.	1993.	Separate estates acquired subsequent to March, one thousand eight hundred and forty-eight, how regulated under the code.
1985.	Disposition of the proceeds of the sale, &c.	1994.	Husband removed from the trust by bill in chancery, for certain causes.
1986.	The husband may receive the property, &c., of the wife.	1995.	On decree of removal, the wife as to her property is a feme sole.
1987.	The wife's estate liable for the support of the family.	1996.	Injunction granted, pending such suit.
1988.	Motion for order of sale of wife's property on a judgment against the husband.	1997.	Persons and property intended to be embraced by the provisions of this article.

Husband not liable for the debts of wife before marriage. She is liable and may be sued separately.

§ 1981. The husband is not liable for the debts of the wife, contracted before marriage; but she may be sued alone, and her separate estate is liable to the satisfaction thereof, as if she were an unmarried woman.

All property of wife is se-

§ 1982. All property of the wife, held by her previous to the marriage, or which she may become entitled to after the

marriage, in any manner, is the separate estate of the wife, and is not subject to the payment of the debts of the husband. cured to her separate use.

§ 1983. Property thus belonging to the wife, vests in the husband as her trustee, who has the right to manage and control the same, and is not required to account with the wife, her heirs, or legal representatives, for the rents, income, or profits thereof; but such rents, income, and profits, are not subject to the payment of the debts of the husband. The husband is trustee for the wife; he enjoys the profits, &c., but they are not liable for his debts.

§ 1984. The property of the wife, or any part thereof, may be sold by the husband and wife, and conveyed by them, jointly, by instrument of writing, attested by two witnesses. Mode of selling and conveying wife's property.

§ 1985. The proceeds of such sale is the separate estate of the wife, and may be reinvested in other property, which is also the separate estate of the wife; or such proceeds may be used by the husband, in such manner as is most benificial for the wife; husband and wife cannot contract with each other for the sale of any property. Disposition of the proceeds of sale.

§ 1986. The husband has power to receive property coming to his wife, or to which she is entitled; and his receipt therefor is a full discharge, in law and equity. Husband may receive property of wife, &c.

§ 1987. For all contracts, for articles of comfort and support of the household, suitable to the degree and condition in life of the family, and for which the husband would be responsible at common law, the separate estate of the wife is liable; to be enforced by action at law, against the husband alone, or against the husband and wife, jointly. Liability of wife's estate for family support.

§ 1988. If suit is brought against the husband alone, upon any such contract, and execution is returned, "not satisfied," the separate estate of the wife may be sold, by order of the court, for the satisfaction of the judgment; ten days' notice in writing being given to the wife, of the intended motion. Motion for order to sell wife's property on judgment against husband.

§ 1989. Married women may, by last will and testament, dispose of their separate estate. Married women may make wills.

§ 1990. If a married woman having a separate estate, die intestate, leaving a husband living, he is entitled to one-half of the personalty of such separate estate absolutely, and to the use of the realty during his life; unless he has been divested of all control over it, by the decree of a court of chancery, as hereinafter provided. Husband's share of wife's estate when she dies intestate.

§ 1991. If any woman having a separate estate survive her husband, and such separate estate, exclusive of the rents, income, and profits, and inclusive of the increase of slaves, is equal to or greater in value than her dower interest, and distributive share in her husband's estate, estimating her dower interest in his lands at seven years' rent of the dower interest, she shall not be entitled to dower in, or distribution of her husband's estate. Wife having separate estate; when excluded from dower and portion in husband's estate.

§ 1992. If her separate estate be less in value than her dower, as ascertained by the rule furnished by the preceding section, so much must be allowed her as, with her separate estate, would be equal to her dower and distributive share in her husband's estate, if she had no separate estate. Allowance made when her separate estate is not equal to the dower.

Estate acquired subsequent to March 1, 1848.

§ 1993. The separate estate of a married woman, acquired subsequently to the first of March, one thousand eight hundred and forty-eight, from and after the time this code goes into operation, is subject to all the rules, regulations, and limitations, contained in this article, for the regulation of the separate estate of married women.

Bill in chancery to remove husband from the trust.

§ 1994. If the husband of any married woman, having a separate estate, from imbecility, intemperance, or from any other cause, becomes incapable of, or unfit for the discreet management and control of such separate estate, the wife, by her next friend, may file a bill in chancery, alleging the unfitness or incapacity of her husband for the discreet and proper management of her estate; to which the husband must be a defendant; and the bill must proceed, and be determined, as other suits in chancery.

Decree of removal vests the wife with the powers and liabilities of a feme sole.

§ 1995. If the allegations of the bill are admitted by the answer, or established by proof, the chancellor must decree that the husband shall no longer have any control over the estate of his wife, or the rents, issues, or profits thereof; and thenceforward the wife shall have the same control over her estate, and the rents, issues and profits thereof, as if she were a feme sole, and may sue and be sued in her own name; but the husband is not liable for her acts or contracts.

Injunction pending the suit.

§ 1996. Pending the suit, the chancellor may enjoin the husband from intermeddling with the estate, and must make such orders and decrees as may be necessary for its preservation.

Property received since March 1, 1848, included in this law.

§ 1997. The provisions of this article take effect, and are operative, on the estates of all married women, who have been married, or have received property by descent, gift, or otherwise, since the first of March, one thousand eight hundred and forty-eight.

ARTICLE IV.

Provisions for the protection of married women and their families.

SEC.
1998. Protection against the improvidence or intemperance of the husband, how obtained.
1999. On proof or admission of the charges, a trustee is appointed.
2000. Duties of such trustee.
2001. Security for the estate pending the suit.
2002. On reformation, &c., the trustee discharged and the property restored.
2003. Earnings of the wife, how secured to her separate use. Petition for that purpose.
2004. On proof of the facts, she is declared a feme sole, &c.
2005. Proceedings and costs in such cases.

Protection to wives and children a-

§ 1998. When a husband or father is, by reason of intemperance, unfit for the management of his estate, or is wasting

or squandering it, having a wife, or child or children under the age of twenty-one years, who, from the conduct of the husband or father, will be greatly injured and neglected, and be in danger of being reduced to poverty and want, the wife and child, or children, or any, or either of them, may by their next friend file their bill in chancery to preserve the estate of the father or husband, from further waste, and for general relief. gainst the improvidence or intemperance of husband or father. How obtained, &c.

§ 1999. The bill must specify the cause for which relief is prayed, and the estate of the husband, or father, who must be made defendant thereto. If the allegations of the bill are admitted, either expressly, or by a failure to answer thereto, or it is established by proof that the allegations of the bill are true, and that the husband or father is wasting his estate, or is for the cause alleged unfit for its management, so that his family will probably be reduced to want, the chancellor must deprive him of all further control over it, and provide for its safe keeping, by the appointment of a trustee. On proof or admission of the charges the chancellor appoints a trustee, &c.

§ 2000. The trustee must manage and superintend the affairs of the estate, and from the avails thereof provide for the support of the husband, wife, and children, and for the education of the latter; making annual returns thereof to the chancellor. Duties of the trustee.

§ 2001. Pending the suit, the chancellor must, by injunction, or otherwise, secure the estate against further waste; but no such decree affects the rights of creditors, acquired previous to the institution of the suit. Security for estate pending the suit.

§ 2002. On the petition of the husband or father to the chancellor, with notice to the trustee, the wife, and children, and on satisfactory proof of the reformation of the husband or father, of his fitness to provide for his family, and have the charge of his estate, it must be restored to him. On reformation the trustee discharged and the property restored to the owner, &c.

§ 2003. When any person has abandoned his wife, or from imbecility, intemperance, or profligacy, is unfit for the management of his estate, or has wasted it, or from any cause shall have no estate but what the law exempts from sale by execution, and the wife of such person shall, by her own industry, be able to maintain herself, or to accumulate property, she may by her next friend file her petition in the chancery court, to have her earnings and accumulations secured to her sole and separate use. Earnings of the wife; when and how secured to her separate use.

§ 2004. Upon the allegations of the petition being admitted by the husband, or established by proof, the court must decree that thenceforward she may act as a feme sole, and as such she may hold real or personal estate; may buy or sell; sue and be sued. Idem.

§ 2005. If thirty days' notice be given in writing to the husband, of the intention to file such petition, it must be heard at the first term, and witnesses may be examined orally in behalf of either husband or wife, or by depositions in the usual mode. No costs whatever shall be taxed against Proceedings and costs in such cases.

Amend 59-60

J-19

any married woman, or her next friend, proceeding in virtue of the two preceding sections.

Voluntary separation of man and wife.

Sec.		Sec.	
2006.	Custody of the children on such separation.	2007.	Mode of proceeding; orders pending the suit.

Custody of the children on a voluntary separation.

§ 2006. In all cases of voluntary separation between man and wife, the court of chancery has power, on the petition of either party, twenty days' notice thereof being given to the other, to permit either the father or mother to have the custody and control of the children, and to superintend and direct their education, having regard to the prudence, ability and fitness of the parents, and the age and sex of the children.

Mode of proceeding. Orders pending the suit.

§ 2007. Upon the hearing of the petition, witnesses may be examined orally, or testimony may be taken as in other chancery cases. Whilst the application is pending, the court may direct an injunction to issue, or make any order that the safety and well being of the wife or children may require.

CHAPTER II.

LEGITIMATING AND ADOPTING CHILDREN.

Sec.		Sec.	
2008.	The marriage of the parents legitimates the children.	2010.	The child's name changed at the same time.
2009.	Proceedings when the parent wishes to legitimate bastard children; effect of so legitimating a child.	1011.	Mode of adopting a child, effect of such adoption.

Marriage of the parents legitimates the children.

§ 2008. The marriage of the mother and reputed father of a bastard child, renders it legitimate, if recognized by the father as his child.

Another mode of legitimating bastard children.

§ 2009. The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognises it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the probate judge of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the probate judge, and recorded on the minutes of his court, has the effect to legitimate such child.

§ 2010. The father may at the same time change the name of such child, stating in his declaration the name it is then known by, and the name he wishes it afterwards to have. Change of the name at the same time.

§ 2011. Any person desirous to adopt a child, so as to make it capable of inheriting his estate, real and personal, or to change the name of one previously adopted, may make a declaration in writing, attested by two witnesses, setting forth the name, sex, and age of the child he wishes to adopt, and the name he wishes it thereafter to be known by; which, being acknowledged by the declarant before the probate judge of the county of his residence, filed and recorded as in the two preceding sections, has the effect to make such child capable of inheriting such estate of the declarant, and of changing its name to the one stated in the declaration; and for services under this chapter, the judge of probate is entitled to a fee of one dollar. Adoption of a child as one's heir, &c.; how effected.

CHAPTER III.

GUARDIAN AND WARD.

Sec.		Sec.	
2012.	Guardians of minors appointed by the judge of probate.	2028.	Terms and notice of the sale, confirmation by the court.
2013.	The minor, if over fourteen years old, may select his guardian.	2029.	Sale of ward's property for re-investment, when allowed and how conducted.
2014.	Father to be preferred, and has the custody of the child, though not appointed guardian.	2030.	Citation to the guardian to make settlement, he is removed if he does not appear, &c.
2015.	Guardians appointed by will of the father, and the mother has the custody of the child till fourteen years old.	2031.	Removal of the ward and his estate to another state, when permitted.
2016.	Guardians for idiots.	2032.	Removal when guardian and ward are non-residents.
2017.	When the sheriff is to be appointed guardian of minors, idiots, &c.	2033.	Such removal made in certain cases.
2018, 2019.	Guardian's bonds, when to be renewed, or additional security required.	2034.	On order of delivery of the property, the representative is discharged.
2020.	By whom approved, and where filed, &c.	2035.	Removal to another county, when allowed, &c.
2021, 2022.	Guardians to return an inventory, and make annual settlements.	2036.	Guardians sue in their own names for the ward's use.
2023.	Final settlements, when and how made and recorded.	2037.	Causes for which the guardian is removed.
2024.	Management of the ward's estate, and loan of his money at interest.	2038.	On refusal to make a final settlement, an account is stated against the guardian by the judge.
2025.	His estate, when to be kept together, and how managed.	2039.	Settlements made in the same manner as by representatives of estates.
2026.	Guardian allowed to keep the slaves together himself at a fair hire.	2040.	Mode of enforcing orders and decrees against guardians.
2027.	If the income is not sufficient, the property may be sold for the ward's support and education.	2041.	Errors in settlements may be corrected by a suit in chancery, &c.

§ 2012. Guardians must be appointed for minors under the

Guardians of minors; how appointed.

age of twenty-one years, by the judge of probate of the county in which such minor resides.

When minor is over fourteen years old.

§ 2013. When the minor is over fourteen years of age, he may nominate a suitable person as his guardian, in person; or such nomination may be certified by any justice of the peace to the probate judge.

Father to have the preference; and when not the guardian still has the custody of the child, &c.

§ 2014. When a minor has a father living, and has an estate in his own right, a guardian must be appointed for him; and his father, if a suitable and proper person, and willing to give bond and qualify as guardian, is entitled to a preference. No such guardian can exercise any control over the person of his ward during the life of the father, or during the life of the mother if the ward is a female, or a male under the age of fourteen years.

Guardians appointed by will, &c.

§ 2015. Guardians may be appointed by the last will and testament of the father, if the right is claimed within six months after the will is admitted to probate; such guardian must give bond with surety, as other guardians appointed in the usual mode; but the mother is entitled to the custody of the person of the ward, until it is fourteen years of age.

Mother has the custody of child till fourteen years old.

Guardians for idiots.

§ 2016. The judge of probate shall also appoint guardians for persons of unsound mind* who may reside in his county, and be possessed of any estate, real or personal.

Sheriff; when guardian of idiots, &c.

§ 2017. If no suitable person will consent to be appointed guardian to a minor or lunatic, the guardianship shall be conferred on the sheriff of the county, who shall take it in virtue of his office; but the judge of probate may, when his official bond is insufficient to secure the interest of the ward, give notice to the grand jury, or the court of county commissioners, that an additional bond may be required, according to the provisions of section 136.

Guardian's bond.

§ 2018. Before granting letters of guardianship, the judge of probate must require the guardian to enter into bond, with sufficient sureties, payable to the judge of probate, in the penal sum of twice the supposed value of the estate of his ward, with condition faithfully to perform all the duties required of him by law, as such guardian, during the time he acts as such.

§ 2019. The bond must be renewed, or additional security required, whenever the judge of probate may consider it

* Whenever a petition is presented to any judge of probate, for the appointment of a guardian for the property or estate of any person, setting forth on oath that such person is lunatic, or non compos mentis, and that he has been so declared by a competent tribunal of the state in which he resides; that he resides out of this state, and has property in the county in which the petition is preferred, requiring the care of a guardian; the judge of probate of such county has jurisdiction, and must order and give notice, as is required for non-resident defendants in chancery; and after such notice, having first appointed a guardian, ad litem, whose duty it is to deny all the allegations of the petition, must proceed to hear the cause upon the proof; and if the allegations of the petition are sustained, must appoint a suitable person guardian of the property and estate of such lunatic or non compos mentis, which is within this state; and such guardian must give bond, and has the same powers as to such property and estate, and is subject to the same liabilities as are provided for other guardians, and must account in the same way. Acts 1851–2.

necessary, or the sureties of the guardian may be unwilling to remain longer bound; and if upon citation the guardian does not renew his bond, with additional security, he must be removed. Bond; when removed or additional security required.

§ 2020. The bonds of guardians must be approved by and filed in the office of the judge of probate. How approved and where filed.

§ 2021. Within three months after the appointment, the guardian must make and subscribe, upon oath, an inventory of all the estate, real and personal, of the ward, and subsequently, as additional property may be received; which must be filed and recorded, and on failure shall be removed. Guardian to return an inventory, &c.

§ 2022. He must make annual settlements of his accounts with the judge of probate, and oftener, if required by the court, which, with the accompanying vouchers, when audited and allowed, must be recorded. Annual settlements of guardian's accounts.

§ 2023. Upon the ward's coming of age, or if a female, upon her marriage, or upon the removal of the guardian, he must make final settlement, which, when audited and allowed, must also, with the accompanying vouchers, be recorded. Upon the final settlement, the previous annual or partial settlements shall be presumed to be correct, but may be impeached for fraud, or for any arithmetical or other error. Final settlements; when and how made and recorded.

§ 2024. It is the duty of the guardian to manage the estate of his ward frugally, and to improve it to the best of his skill and ability. He must, if practicable, lend out all surplus money of the ward on bond and mortgage, or on good personal security; and if the bond is not renewed annually, require the interest to be paid at the end of each year. Duties of the guardian in managing the ward's property and lending his money at interest.

§ 2025. The judge of probate may authorize the guardian of any minor or lunatic, to keep together the estate of his ward and work his slaves for his benefit, making annual returns of the crop, and the sale thereof, and of the disbursements. Estate of the ward; when to be kept together and how managed.

§ 2026. If the ward does not own land, or it is not considered proper to work it, and in the opinion of the judge of probate it is the interest of the ward that his slaves should not be hired out in the usual mode, but kept together, the guardian may be authorized to take care of and work them himself, upon such terms as may, on the testimony of disinterested persons, be considered a just compensation. Slaves of the ward; when to be kept together by the guardian.

§ 2027. When upon the representation of the guardian in writing, it is made to appear to the satisfaction of the probate judge that the rents and profits of the estate of the ward are insufficient for his maintenance and education, the judge of probate may direct a sale of such portion of the estate, real and personal, of the ward, as may be necessary for that purpose. Estate of the ward; when sold for his education and support.

§ 2028. The court must direct whether the sale shall be made for cash or on credit; and must require at least thirty days' notice of the time, place and terms of the sale to be given. The sale is not complete until confimed by the court, nor does the title vest in the purchaser until all the purchase money is paid. Terms and notice of the sale, and confirmation of it by the court, &c.

Sale of ward's property for reinvestment; when allowed and how conducted.

§ 2029. For good cause shown, the judge of probate may authorize the sale of personal and real property of the ward in such manner as he may direct; and direct its reinvestment in other property in the name of the ward, but no sale of real estate must be had on less than forty days' public notice in a newspaper the nearest to the place where such sale is to be made, and returns of sale must be made and confirmed as sales of land by administrators.*

Citation of guardians to make settlements, and removal for failure to appear, &c.

§ 2030. If guardians do not come forward annually and make settlement of their accounts, it is the duty of the probate judge to cause a citation to be served on them to appear and make settlement; and upon their refusal or neglect to make such settlement, it is the duty of the court to remove them from office unless good cause be shown for the omission.

Permission to remove the ward's property to another state; how granted.

§ 2031. The guardian may remove the person and estate of his ward to another state, by making a full settlement with the judge of the probate court where his letters were granted of his guardian accounts, and procuring a transcript of the record of a court of competent jurisdiction of such other state, certified according to the act of congress, showing the appointment of such person as guardian of the ward; the execution of bond with surety for the performance of the trust, in twice the value of the estate of the ward; and adducing testimony that the sureties to such bond are sufficient. Thereupon, the probate judge must make an order authorizing such removal.

Removal when the guardian and ward are both non-residents.

§ 2032. When the guardian and ward are both non-residents, and the ward is entitled to property in this state, which may be removed to another state without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state of the residence of the ward, upon the application of the guardian to the judge of probate of the county in which the estate of the ward or the principal part thereof may be, in manner following:

Idem.

§ 2033. The guardian must produce a transcript from the records of a court of competent jurisdiction, certified accord-

---

*The probate court has jurisdiction to order the sale of lands and to invest money in real and personal property in the following cases, in addition to those cases in which it now possesses it:

1. When it appears that the infant, lunatic or person non compos mentis, owns land and it would be the interest of such person to sell the same, and invest the proceeds in personal estate or at interest.

2. When it appears that it is advantageous to invest in real or personal property, the money of the infant, lunatic, &c.

3. When the court is satisfied that it will be more for the interest of the estate of such lunatic, &c., to sell the real than the personal estate, either for the purpose of paying debts contracted by such person, when of sound mind, or for their comfortable maintenance and support while of unsound mind.

4. When any estate is ordered to be kept together for ten years or any shorter period, and money accumulates in the hands of the administrator or guardian, not required for the use of the estate, the judge of probate having jurisdiction, may order the money or any part thereof to be loaned out or invested in the purchase of real or personal property.—Acts 1841-2, p. 84.

As to the mode of proceeding, manner of conducting sale, &c., making returns, costs, fees, &c., in such cases—Ib.

ing to the act of congress, showing that he has been appointed guardian of the minor in the state in which he and the ward reside, and has duly qualified as such according to the laws thereof, and given bond with surety for the performance of his trust; and must also give ten days' notice to the resident executor, administrator or guardian, if there be such, of the intended application. Thereupon, if good cause be not shown to the contrary, the probate judge must make an order granting such guardian leave to remove the property of his ward to the state or place of his residence, which is an authority to him to sue for and recover the same in his own name, for the use of his ward.

Order of delivery discharges the representative.

§ 2034. Such order is a discharge of the executor, administrator or other person in whose possession such property may be at the time of the order made.

Removal of the ward and his property to another county; when and how allowed.

§ 2035. The person or property of a minor or person of unsound mind, may be moved from one county to another within this state, if in the opinion of the judge of probate it will be for the interest or work no prejudice to such minor or person of unsound mind, in the same manner as is provided in section 2031, for the removal of the person and property of the ward to another state; except that the certificate and seal of the probate judge is a sufficient authentication of the record of the appointment and qualification of the guardian in another county of this state, and that the former guardian, if there be such, shall have had ten days' notice of the application.

Guardians sue for the use of the ward, &c.

§ 2036. Guardians may sue in their own names for the use of the ward, in all cases where the ward has an interest and the judgment enures to his benefit.

Causes of removal of a guardian.

Publication when he resides out of the state.

§ 2037. For waste of the ward's property or neglect of his affairs, for incapacity, continued or habitual inebriety, removal from the state or other sufficient cause, the judge of probate must remove a guardian, giving him ten days' notice to appear and show cause why he should not be removed. In the case of his removal to another state, publication at the court house door is evidence of notice.

On failure to make a final settlement the judge states an account in his absence.

§ 2038. When a guardian removes from this state without making final settlement, or upon citation to appear and make final settlement, fails to attend, without showing sufficient cause therefor, the judge of probate may proceed and state the account in his absence, from the materials in his office, and such other testimony as may be adduced.

Settlements conducted as by representatives of estates.

§ 2039. In the settlement of the accounts of guardians and in all the preparatory proceedings thereto, and appeals therefrom, the law providing for the settlement of the accounts of executors and administrators in this code, and appeals therefrom, so far as applicable, and not in hostility with any provision of this chapter, applies to and are in full force against guardians and their sureties.

Mode of enforcing orders and de-

§ 2040. The judge of probate may enforce his orders and decrees against guardians and their sureties, by attachment.

crees against guardians.

All final decrees against guardians have the force and effect of judgments at law, upon which executions may issue against them and the sureties on their bonds.

Errors in accounts; when corrected in chancery.

§ 2041. Errors in law or fact in the settlement of accounts of guardians, may be corrected in chancery according to the provisions of sections 1915 and 1916.

CHAPTER IV.

MASTER AND SLAVE.

SEC.
2042. Slavery established; rights of the master.
2043. His duties to the slave.
2044. Emancipation of slaves, how made, &c.
2045. Notice by advertisement. of the application.
2046. On proof of cause, the slave to be emancipated.
2047. He must leave the state in six months; proceedings on failure to leave.
2048. Rights of creditors, not to be affected.
2049. Petition of one held as a slave on trial of his freedom.
2050. Summons to the reputed owner; publication if not found, &c.
2051. Proceedings, on appearance or default, of the defendant.
2052. Bond by the master, when in possession.
2053. Security for costs and for appearance, &c. of the petitioner.
SEC.
2054. Judgment on failure of the petitioner, also for costs against the sureties.
2055. If judgment sustains the petition the petitioner is free.
2056. Mother and child to be kept together on sales under execution.
2057. On sales under decrees, mortgages, &c., the mother and child are kept together and sales made by families.
2058. Agent to recover slaves unlawfully imported.
2059. The agent gives bond, &c.
2060. Pending a controversy the slave to be hired out.
2061. Libel to be filed stating the facts and praying a sale.
2062. If the libel is sustained the slaves are sold, &c.
2063. Claims to such slaves, how filed, and time.

African slavery; character of the master's rights.

§ 2042. The state or condition of negro or African slavery is established by law in this state; conferring on the master property in and the right to the time, labor and services of the slave, and to enforce obedience on the part of the slave, to all his lawful commands. This authority he may delegate to another.

Duties of the master to his slave.

§ 2043. The master must treat his slave with humanity, and must not inflict upon him any cruel punishment; he must provide him with a sufficiency of healthy food and necessary clothing; cause him to be properly attended during sickness, and provide for his necessary wants in old age.

Emancipated on application to the judge of probate.

§ 2044. The master may emancipate his slave by application to the judge of probate of his county, in writing, with the name, age and sex of the slave, a description of his person, and the reasons for desiring his emancipation.

Notice of the application by advertisement, &c.

§ 2045. Thereupon the judge of probate must cause an advertisement to be made in a newspaper, published in the county, if there be one, if not, in the nearest adjacent county,

which shall be continued for sixty days, giving notice of the application, and of the time fixed for its determination.

On cause shown the slave to be emancipated

§ 2046. Upon the hearing of the application, if it be shown that the slave has served his master with fidelity, or other good cause be shown for his emancipation, and no sufficient objection be made, the probate judge may make an order that the slave be emancipated, which, with the application, must be recorded on the minutes of the court, and is evidence of the right of the slave to freedom.

On emancipation he must leave the state in six months.

Proceedings when he fails to do or returns.

§ 2047. The slave so emancipated, must leave the state within six months thereafter, and failing so to do, or returning thereafter, must be seized and sold as a slave for life. The proceeds of the sale, after the payment of the necessary expenses, must be paid into the county treasury of the county in which he may be seized; and the county treasurer, sheriff, and all the justices of the peace, and constables, are charged with the execution of this law.

Creditor's rights not to be affected.

§ 2048. No such emancipation affects the rights of creditors, or can be made, unless it be shown that the master is unembarrassed in his pecuniary affairs, and has paid the costs of advertising.

Costs of the emancipation.

The fee to the probate judge is five dollars for each slave emancipated.

Petition for trial of the freedom of one held as a slave.

§ 2049. A slave claiming his freedom, must proceed by petition, in the circuit court of the county in which the reputed owner resides, or that in which he retains the petitioner as a slave; setting forth succinctly the facts upon which the right to freedom is asserted, and the name of the person claiming him as a slave.

Summons to the owner to answer, and publication if not found by the officer.

§ 2050. Upon the filing of the petition, the clerk must issue a summons commanding the reputed owner to appear at the next term of the court to answer to the petition: and if the summons is returned "not found," or if it be shown that such owner is a non-resident, the court must direct publication to be made, which is equivalent to a service of the summons.

Pleadings in the case.

§ 2051. If the defendant appear, he must be required to plead to the petition. If he make default, the trial proceeds as if appearance had been entered, and the truth of the allegations of the petition denied.

Bond, if the owner has possession pending the proceedings.

§ 2052. If the slave is in the possession of the reputed owner, he must be required to enter into bond, in such sum, and with such surety as may be required by the court, payable to the state of Alabama, with condition to abide by the judgment rendered in the premises; and thereupon the master is entitled to the possession of the alleged slave, until the determination of the cause: or the court may require a bond according to the provisions of the following section, in which case the possession of such slave must be given to his sureties, until the cause is determined.

Security for costs and that the petitioner will appear to

§ 2053. If the slave is not in the possession of the reputed owner, he must in like manner execute bond with surety, under the direction of the court, with condition to pay the owner

answer the judgment.

all costs and damages incurred by the institution of the suit, if he fail therein; and that the petitioner will be forthcoming to abide the judgment of the court. These bonds may be taken by the court in vacation, or in term time.

Judgment on failure of the petitioner, also against the sureties on his bond.

§ 2054. If the slave fail in his suit, judgment must be rendered in favor of the master; and if the slave has given bond and surety, as provided in the two preceding sections, judgment shall also be rendered on motion against the sureties, for the costs of the suit, and the damages the master has sustained by the institution thereof.

If judgment is favorable the petitioner is free.

§ 2055. If judgment be rendered in favor of the slave, he is thenceforth entitled to his freedom.

Children of ten years not to be sold under execution without the mother, nor mother without the children.

Exception.

No such sale to be made separating child of five years from the mother.

§ 2056. No execution can be levied on a child, or children, under the age of ten years, without including the mother; or upon the mother, without including the child, or children, as aforesaid, if living, and belonging to the defendant in execution; and the mother and child, or children, must be sold together, unless the parties in interest, or one of them, make affidavit and delivers the same to the officer, that he believes his interest will be materially prejudiced, by selling the slaves together, when they may be sold separately; but no levy or sale shall be made, by which a child under five years of age shall be separated from its mother.

Sales of slaves under decrees, mortgages, trust deeds, &c., to be made by families.

§ 2057. In all sales of slaves under any decree, or order of the chancery or probate court, or under any deed of trust, or power of sale in a mortgage, the slaves must be offered, and, if practicable, sold in families; unless affidavit be made, as required in the preceding section, and delivered to the officer, or other person, having the charge or management of such sale.

Governor to appoint an agent to recover slaves unlawfully imported, &c.

§ 2058. If any slaves, or persons of color, have been or are hereafter brought into this state in violation of the laws of the United States prohibiting the slave trade, the governor of the state must appoint an agent to take possession of such slaves, who has authority to sue in the name of the state of Alabama for the possession thereof.

Agent to give bond, &c.

§ 2059. The agent is required to execute bond payable to the state of Alabama, to be approved by the governor, in such sum as he may direct, with conditions to treat the slaves humanely and have them forthcoming to abide any decree which may be rendered in reference to such slaves, which must be filed in the office of the secretary of state.

Pending a controversy slaves to be hired out, &c.

§ 2060. Pending any controversy about the slaves, the agent must hire them out, and after deducting the sum necessary for their maintenance, must account with the comptroller for his trouble, and pay the residue into the state treasury.

Libel to be filed praying a sale, &c.

§ 2061. It is the duty of the agent, after obtaining possession of the slaves, to file a libel in any circuit court of the state, in the nature of proceedings in admiralty praying a sale thereof; and upon his failure or neglect for thirty days to file such libel, any other person has the power.

If libel is sustained the slaves to be sold.

§ 2062. If it be made to appear that the said slaves have been imported or brought into the United States contrary to the laws thereof, the court must decree that they be sold for cash, to the highest bidder, as slaves for life; and after deducting the costs and expenses, one-fourth part of the proceeds must be paid to the agent or informer, the residue into the state treasury.

Claim to such slaves; how filed and tried.

§ 2063. Any person claiming title to such slave, may interpose as claimant, and, on motion to the court, must be made defendant, according to the practice in courts of admiralty, and be liable for costs.

Title 6.

PROCEEDINGS RELATING TO ESCHEATS, SALVAGE, WATER WORKS AND DAMS, AND THE REDEMPTION OF REAL ESTATE.

CHAPTER 1. Escheats.
" 2. Salvage.
" 3. The erection of water works and dams.
" 4. The redemption of real estate.

CHAPTER I.

ESCHEATS.

SEC.
2064. Property of a decedent, when to escheat to the state.
2065. Notice given by the representative when the heirs, &c., are unknown.
2066. Contents of such notice.
2067. If no heirs appear within a year, the personal property delivered to the judge of probate.
2068. If none appear in two years, the real estate sold, &c.
2069. Decrees against the representative in such cases.
SEC.
2070. Receipts paid to the state treasurer; penalty for default, &c.
2071. Time allowed the heirs to proceed against the estate; exceptions in favor of infants, &c.
2072. Rights of the state, when the representative distributes the property without authority.
2073. } Duties of the judge of probate
2074. } in relation to escheats; his compensation.

Property of decedent, when to escheat to the state.

§ 2064. The property of all persons who die without devising or bequeathing the same, and leaving no lawful heirs or husband or wife capable of taking, or where the devisees are incapable of taking the same, and there are no lawful heirs, escheats to the state.

Notice by the representative when no heirs can be found, &c.

§ 2065. The personal representatives of any person leaving property not devised or bequeathed, or where the devisees are incapable of taking and such representatives are unable to ascertain any lawful heirs or distributees, or person capable of taking, within six months after the grant of letters of administration, must give notice thereof in some paper published in the state, once a week for three successive months.

Contents of such notice.

§ 2066. Such notice must contain the name of the deceased, as near as may be; a description of his person, the place where he was, or is supposed to have been born, the place where he died, or was known to reside; and a description of the property, of which he died seized or possessed.

If no heirs, &c., appear for twelve months the personal estate to be paid over to the judge of probate.

§ 2067. If no heir or person entitled to receive such estate appears or is ascertained within twelve months after such publication, the money and proceeds of the personal assets must be paid to the judge of probate, deducting the expences of the administration.

If no heir appears for two years the real estate to be sold, &c.

§ 2068. After two years from the publication of such notice, if no heir, or person entitled to receive such estate, appears, the real estate must be sold by such personal representative, under the direction of the judge of probate of the county in which letters testamentary or of administration are granted, and upon such notice as real estate is sold by executors and administrators, and the proceeds thereof, after deducting the expences and all allowances, paid to such judge.

Damages against representatives in such cases.

§ 2069. The judge of probate may render decrees against such personal representatives, in the name of the state, for the money or proceeds of the property, under the provisions of this chapter, and enforce the same, as other decrees by the judge of probate against executors or administrators are enforced.

Judge of probate to pay over such receipts to the state treasurer.

Penalty on failure to do so.

§ 2070. The judge of probate must, within three months after the receipt thereof, pay to the state treasurer all moneys he may receive under the provisions of this article, and failing so to do, is liable as a defaulter; and also forfeits three hundred dollars, one half to the state, and the other to any one suing for the same; and on the trial, the certificate of the treasurer is presumptive evidence of his failure to make such payment.

Time allowed heirs, &c., to sue the state for such funds.

Exceptions in favor of infants, &c.

§ 2071. Any heir or devisee of such estate, may enforce his claim as such against the state, by suit for the amount actually paid into the state treasury, within ten years after the grant of such letters testamentary or of administration; and infants and lunatics are allowed five years after the termination of their respective disabilities.

Right of the state to such escheats, how enforced when the representative pays them without authority, or when held by any person not entitled.

§ 2072. The state may enforce its right to any personal property to which it is entitled under the provisions of this chapter, by action against any person into whose possession the same may come; and if any personal representative pays any money, or delivers any property to which the state is under the provisions hereof entitled, to any person not authorized to receive the same, such personal representative and his securities are liable to the state for the amount of such money, or value of such property, and interest from the time of such payment or delivery.

Duty of judge of probate under this chapter.

§ 2073. It is the official duty of the judge of probate of each county, to attend to the interest of the state intended to be secured by the provisions of this chapter.

§ 2074. The judge of probate is entitled to ten per cent.

commission on all amounts received by him under the provisions of this chapter. His commissions.

CHAPTER II.

SALVAGE.

SEC.
2075. Property adrift may be taken up.
2076. Proceedings of appraisement of such property.
2077. } Copy of the appraisement to be
2078. } retained; property, when to be advertised, &c.
2079. Contents of such advertisement.
2080. Advertisements, how made when of less value than thirty dollars.
2081. On proof of title the property restored.
SEC.
2082. } Compensation for taking up the
2083. } property, &c.
2084. Fees of the justice in such cases.
2085. Time within which the claim to the property must be made; if no claim made, the property vests in the taker up.
2086. Mode of recovering the property when the delivery is refused.
2087. Penalty for concealing or destroying such property.
2088. On the death of the salvor his representative acts.

§ 2075. All property adrift may be taken up by any person and secured. Property adrift may be taken up.

§ 2076. Such person must, within two days after the same is taken up, exhibit the property to a justice, and if in his opinion it is worth over thirty dollars, he must issue an order of appraisement to three disinterested freeholders or householders, who, after being duly sworn to estimate the value of such property fairly, must appraise and certify the same to the justice of the peace, with a description of the property; if not exceeding the value of thirty dollars, the justice must make the appraisement and description of the property. Appraisement if the property is worth more than thirty dollars. When of less value than thirty dollars

§ 2077. The justice must give to the taker up a copy of the appraisement and description of the property, retaining the original. Copy of appraisement to be retained.

§ 2078. If the appraised value is over thirty dollars, the taker up must, within ten days thereafter, give notice thereof in the newspaper published the nearest to the place where the property was taken up. Advertised when property valued at thirty dollars or more.

§ 2079. Such advertisement must state the name of the taker up, the time and place, a description of the property, with its marks, and the name of the owner if known, its appraised value, and where the same is secured or deposited. Contents of the advertisement.

§ 2080. If the property is not worth exceeding thirty dollars, the same must be advertised at the next public steamboat landing, if the property was taken up on a navigable stream; otherwise, at the nearest public place, within five days after the taking up. How advertised when not worth thirty dollars.

§ 2081. The owner may, on notifying the taker up, or the person in possession, and proving the property by his own On proof of title the own-

er may have it restored.

oath, or the oath of another, satisfactorily to a justice of the peace, obtain from such justice an order to restore such property on the payment of the legal costs and charges thereon.

Compensation of the taker up.

§ 2082. The taker up is entitled to ten per cent. on the appraised value of each bag of cotton, and on other property as follows: twenty-five per cent. on all under thirty dollars; between thirty and one hundred dollars, twenty per cent.; between one hundred and five hundred dollars, fifteen per cent.; between five hundred and one thousand dollars, ten per cent.; and on all over one thousand dollars, five per cent.

Also to be paid his charges.

§ 2083. The taker up is also entitled to the justice's fees paid by him, the expenses of the advertisement, if published in a newspaper, and reasonable compensation for the keeping, if necessary to preserve the property from loss or injury, to be ascertained as in the case of estrays.

Fees of justice.

§ 2084. The justice is entitled to one dollar for the appraisement, if made by him, one dollar for the summons, and the appraisers, other than the justice, two dollars each, to be paid by the taker up.

Time allowed owner to make his claim.

§ 2085. The owner may prove his property, if appraised at not more than thirty dollars, within three months; between thirty and one hundred dollars, in six months; at more than one hundred dollars, within one year after the appraisement;

If no claim is made property vests in the taker up.

and on failure to do so, the right to the same is vested in the taker up, under the provisions of this article.

Remedy of the owner when the taker up refuses to deliver the property.

§ 2086. If the taker up, or the person in possession of the property fails to deliver the same to the owner on the order of the justice, and the payment of or offering to pay all legal costs, charges, and expenses for keeping, such owner may recover the same, and the person failing also forfeits to any person suing for the same double the appraised value of the property.

Penalty for concealing, destroying, &c., of property so taken up.

§ 2087. If any person conceals, destroys, injures, obliterates or defaces any mark, disposes of or carries beyond the state any property taken up adrift, before the expiration of the time allowed by this chapter for the owner to prove his property, he is liable to such owner to the extent of the injury he may sustain thereby, and is also guilty of a misdemeanor, and on conviction must be fined not less than one hundred dollars.

On death of taker up his representatives to act, &c.

§ 2088. If the taker up dies before the expiration of the time allowed by the owner to prove his property, all the provisions of this article in relation to the giving up of the property, apply to his personal representatives.

CHAPTER III.

THE ERECTION OF WATER WORKS AND DAMS.

SEC.
2089. Dams, by whom to be erected.
2090. When the applicant owns both sides of the stream, he applies to the judge of probate of his county.
2091. If he owns only one side, application to be made to the judge of probate of the opposite side.
2092. } Contents of such applications.
2093. }
2094. Writ of ad quod damnum directed to the sheriff.
2095. Notice given to the owners of the lands.
2096. Notice when the owner is a minor, &c.
2097. Notice when the owner is a non-resident.
2098. Mode of executing the writ, charge to the jury.
2099. Jury also assess the value of one acre of land on the opposite side.
2100. Inquest to be in writing, and signed and returned.
2101. Parties summoned to show cause against the inquest.
2102. Notice to be by personal service, exceptions.
2103. Causes for rejecting the application, if no such cause exists, the application to be granted.
2104. Failure to pay the assessment for three months, revokes the grant.
2105. On payment of the assessment a conditional fee vests.
2106. On breach of the condition the land reverts.
2107. Proceedings when a ditch or canal through another's land is necessary.
2108. Authority to raise the dam higher.
2109. Failure to build or repair the works, avoids grant.
2110. Who may contest such applications.
2111. Damages for raising a dam without authority.
2112. } Fees of the judge, sheriff, and
2113. } jurors.
2114. }
2115. The deputy sheriff may act in such cases.

Dams; who may erect them.

§ 2089. Any person may erect a dam across any water course not being a navigable stream, if he is the owner in fee simple of the lands on each side, or on one side and part of the bed thereof where he proposes to erect such dam, by proceeding as in this chapter is hereinafter provided.

When he owns each side he applies to judge of probate of the county.

§ 2090. If he is the owner on each side, he must make application to the judge of probate of the county in which he proposes to erect the mill or other machinery.

If he owns only one side he must apply to judge of probate of county on opposite side.

§ 2091. If he is the owner of the land on one side only, he must make application to the judge of probate of the county in which the lands on the opposite side on which he would abut his dam lie.

Contents of the application when he owns both sides.

§ 2092. If he own the lands on each side, the application must contain a description of the lands by sectional divisions or subdivisions, township and range; the name of the water course; on which side he intends to erect his mill or other machinery; the height of the dam and the kind of mill or other machinery he proposes to erect.

Contents when he own only one side.

§ 2093. If he owns the land on one side only, he must, in addition to the requisitions of the preceding section, set forth the name of the owner of the land on which he proposes to abut; if he is a minor, lunatic or of full age, and his residence.

Writ of ad quod dam-

§ 2094. The judge of probate on the filing of the petition must issue a writ to the sheriff, requiring him to summon

num directed to the sheriff.

seven disinterested freeholders of the county, to meet at the place where the dam is to be erected, on a day to be specified in the writ, not less than fifteen or more than thirty days after filing the application, and then and there to enquire touching the matters contained therein.

Notice to the owner of the lands.

§ 2095. Notice must be given to the owner of the land on the opposite side of the stream by serving him, his tenant or agent with a copy of the writ or application, if to be found in the county, if not, by posting up a copy, ten days before the day specified in the writ for such meeting, in a conspicuous place on the land.

Notice when the owner is a minor, &c.

§ 2096. If such owner is a minor or lunatic, such service must be upon his guardian, and if he has no guardian, the judge must appoint one to protect his interest.

If the owner is a non-resident.

§ 2097. If such owner is a non-resident, notice must be given by publication in the paper nearest to such land for three successive weeks.

Duty of the sheriff in executing the writ.

§ 2098. The sheriff must attend with a copy of the application, and the jury on the day appointed; and after such jury is sworn by the sheriff to discharge their duties fairly and to the best of their ability, must be charged by him:

Charge to the jury.

1. To examine the land above and below belonging to others, which may probably be overflowed or injured, and ascertain and assess the damages resulting from the erection of such dam, to the several owners of such lands.

2. If the residence of such owner or the out houses, enclosures, gardens or orchards thereto immediately belonging will be overflowed.

3. If the health of the neighborhood will probably be endangered.

4. If any other mill or water works will be overflowed.

Jury also to assess the value of one acre of land.

§ 2099. If the applicant is not the owner on each side, the jury must also be charged to ascertain and assess the value of one acre of land on the opposite side of the water course, to include the place where the applicant would abut his dam, and to locate and circumscribe the same by metes and bounds, having a due regard to the interest of all parties.

Inquest to be signed and returned.

§ 2100. The inquest of the jury must be reduced to writing, signed by a majority and delivered to the sheriff, and by him returned in five days thereafter to the office of the judge of probate.

Parties interested then to be summoned to appear and show cause, &c.

§ 2101. On the return of the inquest, the judge of probate must summon the owner of the acre of land, if the same is assessed by the jury, and also the several owners of the land found by the inquest to be liable to damages, to appear before such judge on a day named in such summons and show cause why the applicant should not have permission to erect his dam.

Notice to be given by personal service. Exception.

§ 2102. Ten days' notice must be given to the several owners to show cause against such application by personal service if to be found in the county; if not by posting up a copy at a conspicuous place on the several tracts of land, ten days before the day.

§ 2103. If on the day appointed to show cause, or any other day to which the matter may be continued, it appear to such judge from the inquest or from any other evidence, that the residence of any owner or the out houses, enclosures, garden or orchard, immediately belonging thereto, will probably be overflowed, or that the health of the neighborhood will probably be endangered, or any other mill or water works probably overflowed, the judge must not grant the application; but if such results are not likely to ensue, the application must be granted. Causes for rejection of the application. Otherwise granted.

§ 2104. If the application is granted, the applicant must, within three months thereafter, pay to the several owners or to the judge of probate for the use thereof, the sums severally assessed; and a failure to make such payment within the time, operates as a revocation of the grant. Failure to pay assessment revokes the grant in three months

§ 2105. On making the payments in the preceding section, the applicant is vested with a conditional estate in fee, to the acre of land located and circumscribed, to become absolute on the following conditions: On payment of the assessment a conditional fee vests.

1. That the dams, mills or other machinery be commenced within one and finished in three years from the date of the grant.

2. That whenever the dam, mill or other machinery is destroyed or materially impaired, the same must be repaired or rebuilt within three years thereafter; but if the owner of such dam is an infant or lunatic, he is allowed the same length of time after the removal of such disability, to commence, finish, repair or rebuild.

§ 2106. On the failure to comply with the conditions provided in the preceding section, the land reverts to its former owner, or his heirs. The land reverts to the owner on breach of the condition.

§ 2107. When such lands join other lands, and it is necessary for the erection of the mill or machinery to dig a ditch or canal through such other lands, the application must be made to the judge of probate, of the county in which the lands through which the ditch or canal is proposed to be dug, lie. And the writ obtained, inquest held on the same, notice, the inquest returned, owners of such other lands summoned to show cause, application granted or refused, and damages paid, the same as in other cases provided for by this article. Proceedings when a canal through another's lands is necessary.

§ 2108. An owner or proprietor of any dam erected under this article, may raise the same on application to the judge of probate, and the same proceedings had as on the first application. Mode of obtaining authority to raise the dam higher.

§ 2109. If any person to whom permission to erect a dam under this article has been granted, his grantees, or heirs, fail to build, rebuild, or repair the same, together with the mill, or other machinery, according to the provisions of section 2105, the grant is void. Failure to comply with conditions in sec. 2005 avoids the grant.

§ 2110. In all applications under this article, any person making affidavit, that he is interested against the same, and Any person making oath and giving

security for costs allowed to contest the application.

giving security for the costs, if he fail to defeat such application, must at any time before such application is granted, be permitted to make himself a party, and to contest the same.

Liability for raising a dam without authority.

§ 2111. Any person who builds, or raises any dam, or other obstruction across any water courses, except under the provisions of this article, and thereby works any injury to any other person, by overflowing his land, or in any other way, is liable for double damages for such injury, and may, if the same is a nuisance to the neighborhood, be prosecuted therefor.

Fees and costs in such proceedings allowed to the judge of probate.

§ 2112. The judge of probate is entitled to fifty cents for issuing the writ on the application, and twenty-five cents for each copy of such writ and application, to be paid at the time such application is made; and if publication is required, the applicant must deposit with such judge an amount sufficient to cover the expences therefor; for each notice to show cause and copy, fifty cents, to be paid by the applicant, on the return of the inquest, and before the issue of the notice; for determining on the application, two dollars, to be paid by the applicant, if the same is not contested, otherwise by the unsuccessful party; for issuing subpœnas to attend on the hearing of the application, the same fees as in other cases, to be paid by the unsuccessful party for which execution may issue.

Fees of the sheriff.

§ 2113. The sheriff is entitled for the service of each writ, application, or notice, under this article, and return thereof, fifty cents; for summoning a jury, attending, charging the same, and returning their inquest, five dollars, to be paid by the applicant, before any other proceedings are had; for service of subpœnas, and other services, the same fees as in other cases, to be paid by the unsuccessful party, for which execution may issue.

Fee of the jurors.

§ 2114. The jury of review are each entitled to two dollars, to be paid by the applicant, before they return their verdict.

Deputy sheriff may act.

§ 2115. The duties imposed on the sheriff under this article, may be performed by deputy.

CHAPTER IV.

THE REDEMPTION OF REAL ESTATE.

SEC.

2116. Redemption by the debtor of real estate sold under execution, decree, mortgage, or deed of trust.

2117. Possession to be delivered in ten days; notice to a tenant dispenses with attornment.

SEC.

2118. The purchase money, and ten per cent. per annum, to be tendered the purchaser.

2119. Writ of unlawful detainer on refusal of the purchaser to reconvey, &c.

2120. Judgment creditors also allowed to redeem.

SEC.
2121. Cases in which the purchaser, &c., may refuse to allow the redemption.
2122. One creditor may redeem from another.
2123. Creditor also entitled to writ of unlawful detainer, on refusal to permit redemption, &c.
2124. The plaintiff in a judgment, the mortgagor or beneficiary in a trust deed, are deemed creditors.
2125. The child may redeem, on a conveyance from the parents.
2126. Value of improvements to be paid for; how ascertained.
2127. Penalty for refusing to appoint a referee.
2128. The executor, or administrator, may redeem.

Redemption, by debtor, of real estate sold under decree, executions, deeds of trust or mortgages within two years of sale.

§ 2116. Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in chancery, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor from the purchaser, or his vendee, within two years thereafter, in manner following:

Possession to be delivered on demand, and notice to a tenant dispenses with attornment.

§ 2117. The possession of the land must be delivered to the purchaser within ten days after the sale thereof, by the debtor, if in his possession, on demand of the purchaser or his vendee. If the land is in the possession of a tenant, notice to him by the purchaser, or his vendee, of the purchase, after the lapse of ten days from the time of the sale, and that it has not been redeemed, vests the right to the possession in him, in the same manner as if such tenant had attorned to him.

The purchase money and ten per cent. per annum also to be tendered.

§ 2118. The debtor must also pay, or tender to the purchaser, or his vendee, the purchase money, with ten per cent. per annum thereon, and all other lawful charges; and such payment, or tender, has the effect to reinvest him with the title; and if a conveyance has been made to the purchaser, he must, at the costs of the debtor, convey to him such title as he acquired by the purchase.

Writ of unlawful detainer lies when the party refuses to deliver possession.

§ 2119. If the possession of the land had been delivered to the purchaser by the debtor, and upon payment or tender as aforesaid, is not restored to him, he may recover possession by a suit for unlawful detainer, before a justice of the peace.

Judgment creditors allowed also to redeem, &c. 9 Ala., 713; 12 Ala., 312; 13 Ala., 604; 17 Ala., 300; 18 Ala., 708.

§ 2120. All judgment creditors of the debtor, who, without fraud, or collusion, had obtained such judgment before the sale of the land, or within two years thereafter, except by confession of the debtor, may in like manner redeem the land from such purchaser, or any one claiming under him, by paying or tendering the amount bid for such land at the sale thereof, and ten per cent. per annum thereon, together with all lawful charges; and by further offering to credit the debtor, upon a subsisting judgment, with a sum at least equal to ten per cent. of the amount originally bid for the land; and upon such payment or tender being made, and credit actually given to the debtor, the title to such land vests in the creditor, and the purchaser must convey to him such title as he has, at the costs of the creditor.

Case in which the purchaser or his vendee

§ 2121. But if the purchaser, or person claiming under him, agrees to credit, and actually does credit the debtor, upon a subsisting judgment, with the sum offered to be

may refuse to accept the sum offered, &c.

credited by the creditor, he may retain the land, unless the creditor make a further offer to credit the debtor, upon a subsisting judgment, with an additional sum, not less than ten per cent. on the original purchase money, to which the purchaser, as hereinbefore provided for, is required to respond, by offering to give the debtor a similar credit; and upon his failure to do so, and upon the credit being actually given by the creditor to the debtor, and the payment or tender of the purchase money, with ten per cent. per annum thereon, as aforesaid, to the purchaser, the title vests in such creditor.

It may be redeemed by one creditor from another

§ 2122. One creditor may, in like manner, within two years from the sale of the land, redeem it from another creditor; and in that case, the creditor offering to redeem, must pay, or tender to the creditor in possession, the amount he had to pay to obtain the land, with ten per cent. per annum thereon, and must offer to credit the debtor as provided in the preceding section.

Creditor also entitled to writ of unlawful detainer.

§ 2123. A creditor has also the right to recover the possession of the land before a justice of the peace, for an unlawful detainer.

If plaintiff, mortgagee or creditor under a deed of trust is a purchaser, he is deemed a creditor, &c

§ 2124. When the plaintiff in execution, mortagee, or beneficiary in a deed of trust, is the purchaser, he is considered a creditor within this chapter, to the extent to which his judgment, mortgage, or deedof trust, remains unsatisfied.

If the parent has conveyed the land to a child he may redeem.

§ 2125. When land has been conveyed by a parent to a child, and sold as the property of the parent, the child has the right to redeem, within the time, and upon the terms as provided in this chapter.

Value of permanent improvements to be paid, &c

§ 2126. Any person offering to redeem, must pay to the person in possession the value of all permanent improvements made by him, after he acquired title. If the parties cannot agree upon the value of the improvements, each must appoint a referee to ascertain the value thereof; who, if they cannot agree, must appoint an umpire, who must make their award within three days, which is final between the parties.

Value ascertained by referees.

On refusal to appoint a referee.

§ 2127. If the person offering to redeem, declines to nominate a referee, he must pay the value put upon the improvements by the person in possession. If the latter, after an appointment by the former, refuses to make such appointment, he forfeits his claims to compensation for such improvements.

Penalty.

Redemption may be made by and from representatives of estates.

§ 2128. The right of redemption secured hereby, may be asserted within the time limited, by the executor, or administrator of the debtor, or of any judgment creditor of the debtor, and against the executor, or administrator of the purchaser of the land, or of his vendee.

PART THIRD.

PROCEEDINGS IN CIVIL CASES.

Title 1.

PROCEEDINGS IN CIVIL ACTIONS IN COURTS OF COMMON LAW.

CHAP. 1. Of the parties.
" 2. Of the mode of commencing suit.
" 3. Of the issue, execution and return of the summons.
" 4. Of arrest and bail.
" 5. For the recovery of personal property in specie.
" 6. Of real actions.
" 7. Of defamation.
" 8. Of pleadings.
" 9. Of the trial and its incidents.
" 10. Of evidence.
" 11. Bills of exception.
" 12. Of the removal of the trial.
" 13. Proceedings when suit is brought or judgment rendered for a less amount than that of which the court has jurisdiction; and calculation of interest by the clerks.
" 14. Appeals from justices of the peace, and removal of causes by certiorari.
" 15. Costs.
" 16. Amendments.
" 17. For the correction of errors after judgment, prevention of abuse of process, and for rehearings in certain cases.
" 18. Of the revival of judgments.
" 19. Of execution and forthcoming bonds.
" 20. Garnishment on judgments.
" 21. Of limitation of actions.

CHAPTER I.

OF THE PARTIES.

SEC.
2129. Suits brought in the name of the beneficial owner, subject to offsets against the payee till notice.
2130. Beneficiary considered the sole party to the record.
2131. When husband and wife should be joined as plaintiffs and defendants.
2132. Infants sue by next friend, and defend by guardian appointed by the court.
SEC.
2133. Unmarried woman may sue for her seduction.
2134. Suits for seduction of a daughter brought by either parent.
2135. Either parent may sue for injury to a child.
2136. On desertion of the husband and father, the wife may sue in his name.
2137. State sues in its own name, without affidavit or security for costs.

SEC.
2138. State may be sued by citizens or domestic corporations.
2139. Solicitor of the circuit defends for the state.
2140. Comptroller pays the judgment on certificate of the judge, &c.
2141. Claim to be presented to the court before suit against the county.
2142. Joinder of partners by service on one, or only one may be sued.
2143. Joint promises in writing construed as joint and several.
2144. Interpleader in courts of common law.
2145. Notice of such plea, when claimant is a non-resident.
2146. Actions not abated by death of parties, but may be revived in eighteen months.
2147. Death of nominal plaintiff does not abate the action.
2148. On citation to representative judgment may be rendered by default, after eighteen months.
2149. Discontinuance may be entered if defendant not served, or alias issued.
SEC.
2150. Suits do not abate by marriage of a party.
2151. Suits on lost notes, bills of exchange, &c., except lost bank notes.
2152. Execution not to issue without bond of indemnity.
2153. Service on one representative is sufficient.
2154. Suits on official bonds, or bonds of executors, guardians, &c., brought in the name of the party injured.
2155. Suits for penalties, when no mode of recovery is provided in the statute imposing them.
2156. Plaintiff suing several defendants liable for costs to those who cast him.
2157. Actions which survive to the representative.
2158. Real actions, and for trespass to lands, survive to heir or representative.
2159. If performance of contract prevented by death, recovery had for part performance.

Suits on contracts to pay money brought in name of the beneficial owner subject to off-sets except bills of exchange.

§ 2129. Every action founded upon a promissory note, bond, or other contract, express or implied, for the payment of money, must be prosecuted in the name of the party really interested, whether he have the legal title or not, subject to any defence the payer, obligor, or debtor may have had against the payee, obligee, or creditor, previous to notice of the assignment or transfer; but this clause does not apply to bills of exchange, or instruments payable in bank or at a private banking house; in all other cases the suit must be instituted in the name of the person having the legal title.

Beneficiary sole party on the record.

§ 2130. In all cases where suits are brought in the name of the person having the legal right for the use of another, the beneficiary must be considered as the sole party on the record.

Husband and wife; when joined as plaintiffs or defendants.

§ 2131. Husband and wife must be joined, either as plaintiffs or defendants, when the wife has an interest in the subject-matter of the suit, unless the suit relate to her separate estate, when she must sue or be sued alone.

Infants sue by next friend or guardian.

§ 2132. Infants must sue by their next friend, and be defended by a guardian, to be appointed by the court.

Feme sole may sue for her seduction.

§ 2133. An unmarried female may prosecute as plaintiff an action for her own seduction, and may recover such damages as may be assessed in her favor.

Suits for seduction of a child brought by either parent.

§ 2134. A father, or in case of his death, or desertion of his family, the mother, may prosecute as plaintiff for the seduction of the daughter, though the daughter be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service; but the institution of a suit by the daughter is a bar to an action by the father or mother.

Parent may sue for injury to a child.

§ 2135. A father, or in case of his death or desertion of his family, the mother, may maintain an action for an injury to a minor child living in the family, and a guardian for an injury to his ward.

On desertion of husband wife may sue in any action in his name.

§ 2136. When a husband and father has deserted his family, the wife and mother may prosecute or defend in his name, any action which he might have prosecuted or defended, and has the same powers and rights he might have had.

State sues in its own name and no affidavit or security required of it.

§ 2137. The state of Alabama may sue in its own name, and is entitled to all the remedies provided for the enforcement of rights between individuals, without giving bond or security, or causing affidavit to be made, though the same may be required if the action were between private citizens.

State may be sued by citizens or domestic corporations.

§ 2138. A citizen of this state, or domestic corporation, may bring suit against the state of Alabama in the circuit court of the county in which he resides, or in which such corporation is located, which must in all respects be governed by the same rules as suits between individuals.

Solicitor of circuit defends for the state.

§ 2139. The solicitor of the circuit in which the suit is pending must attend to the suit on the part of the state, and the governor may, if necessary, employ assistant counsel, and the judge of the court determine the compensation.

Comptroller to pay judgment on certificate of the judge and clerk after six months.

§ 2140. If judgment be rendered against the state, it is the duty of the comptroller, on the certificate of the clerk of the court, together with that of the judge who tried the cause, that the recovery was just, to issue his warrant for the amount, but no certificate must issue until six months after the recovery of judgment.

Suits not to be brought against a county until claim has been presented to and disallowed by court of county commissioners.

§ 2141. No suit can be brought against a county until the claim or demand has been presented within the time limited by section 775, to the court of county commissioners, and either disallowed or reduced by such court, and refused by the party.

Suits against partners by service on one and the judgment binds all; or only one may be sued.

§ 2142. Two or more persons associated together as partners in any business or pursuit, who transact business under a common name, whether it comprise the names of such persons or not, may be sued by their common name, and the summons in such case being served on one or more of the associates, the judgment in the action binds the joint property of all the associates, in the same manner as if all had been named defendants, had been sued upon their joint liability, and served with process; any one of the associates or their legal representatives may also be sued for the obligation of all.

All joint promises or covenants in writing construed as joint and several.

§ 2143. When two or more persons are jointly bound by judgment, bond, covenant, or promise in writing of any description whatsoever, the obligation or promise is in law several as well as joint, and suit may be instituted thereon against the legal representatives of such as are dead.

Defendant may deposit money in court and on affidavit that

§ 2144. A defendant against whom an action is pending upon any contract for the payment of money, may at any time before issue joined, make affidavit in writing that a per-

another claims it be discharged.

son not a party to the action, and without collusion with him, claims the money in controversy, and deposit the money in court, praying an order that the person so claiming the money be substituted in his place. The court must thereupon direct notice to be given to the claimant of the money, and the plaintiff, and may in its discretion, after such notice has been served, make the order prayed for; and thereupon the substituted defendant stands in the place of the original defendant, and the latter is discharged from liability.

Manner of giving notice when claimant is a non-resident.

§ 2145. If the person claiming the money is a non-resident, the court must direct the manner of giving notice.

Actions which in their nature survive do not abate by death, &c., of either party, but may be revived in eighteen months.

§ 2146. No action abates by the death or other disability of the plaintiff or defendant, if the cause of action survive or continue; but the same must, on motion, within eighteen months thereafter, be revived in the name of or against the legal representative of the deceased, his successor or party in interest; or the death of such party may be suggested upon the record, and the action proceed in the name of or against the survivor.

Death of nominal plaintiff not to alter the action.

§ 2147. When suit is brought for the use of another, the death of the nominal plaintiff does not abate the suit, but it proceeds in the name of the beneficiary; when the beneficiary dies, it must be revived in the name of his personal representatives, whether the nominal plaintiff be living or not.

On citation to representative after death of defendant judgment may be rendered by default.

§ 2148. When suggestion is made of the death of a party to the suit, and motion to revive, the legal representative of such deceased must be cited to appear at the next term and defend, and on failure to do so, after service of citation on him, judgment may be rendered against such legal representative, after eighteen months from the grant of letters, in the same manner as if he had appeared.

In suits against defendants jointly bound discontinuance may be entered as to those not served or alias issued.

§ 2149. When any suit is instituted against two or more persons, upon any joint, or joint and several contract, or upon any joint, or joint and several cause of action, the plaintiff may, at his election, sue out an alias summons, or discontinue as to those on whom the summons is not served, and proceed to judgment against those on whom it has been executed.

Suits against an unmarried woman do not abate by her marriage, &c.

§ 2150. Suits brought by or against an unmarried woman, do not abate by her marriage, but the marriage being suggested upon the record, the suit proceeds in her name acquired by the marriage, and judgment is rendered accordingly. If judgment be rendered against her, it may be satisfied out of her separate estate.

Suits on lost notes, bills of exchange, &c

§ 2151. Suit may be brought on a bond, note, bill of exchange, or other mercantile instrument, which has been lost, or destroyed by accident, and if affidavit be made by the plaintiff of such loss and destruction, and the contents thereof, and that the same has not been paid, or otherwise discharged, and accompanies the complaint, it must be received as presumptive evidence both of the contents, and loss or destruction of such instrument; unless the defendant, by plea, verified by affidavit, denies the execution of such bond,

note, or bill, or the indorsement, acceptance, or the contents thereof; in which case proof of such execution, indorsement, acceptance, or contents, must be made by the plaintiff; but this section must not be so construed as to authorize a suit for the recovery of a note or bill issued by an incorporated bank to pass as money, and alleged to be lost or destroyed. When the suit is against an executor or administrator, he may controvert the oath of the plaintiff of the loss, destruction, or contents of the instrument sued on, by swearing to the best of his knowledge and belief.

Not to authorise suits on lost bank notes.

§ 2152. When suit is brought under the provisions of the preceding section, to recover upon a bill of exchange or other instrument which by the provisions of this code is declared subject to the law merchant, and alleged to have been lost or destroyed before the maturity thereof, no execution must issue on the judgment, until the plaintiff execute bond payable to the defendant, with surety in twice the amount of the recovery, with condition to pay all such damages as he may sustain by reason of the said judgment and the payment thereof.

Execution not to issue on judgment till bond and security is given.

§ 2153. When there are two or more executors or administrators of an estate, service of summons on one is sufficient.

Service on one representative is sufficient.

§ 2154. For any breach of any official bond or undertaking of any officer of this state, executor, administrator, or guardian, or of any bond or undertaking given in an official capacity to the state of Alabama, or any officer thereof, the person aggrieved may sue in his own name, assigning the appropriate breach.

Person injured may sue in his own name on any official guardian's or executor's bond.

§ 2155. When a penalty is imposed by statute, and no mode is provided therein for the recovery thereof, any citizen of the state may sue for the same, on behalf of himself and the county in which it is instituted.

Any citizen may sue for a penalty imposed by law.

§ 2156. When a suit is instituted against several defendants, whether sued as partners, or otherwise, the plaintiff may recover against one or more, but is liable for costs to those against whom he does not obtain judgment.

Plaintiff suing several, liable for costs to those who cast him

§ 2157. All actions on contracts, express or implied, all personal actions except for injuries to the person or reputation, survive in favor of and against the personal representatives.

Actions survive to the representative.

§ 2158. Real actions to try the title, or for the recovery of the possession of lands, and actions for injuries to lands, survive in favor of heirs, devisees, or personal representatives, and against heirs, devisees, tenants, or personal representatives, according to their respective rights, and the court must direct the record and judgment to be so framed as to secure their rights and declare their respective interests.

Real actions and actions for trespass on lands, survive to or against him or representative.

§ 2159. When a party contracts for the performance of services by himself for a stipulated period of time, and is prevented from the performance of his contract by death before the expiration of the time, his legal representatives may recover a rateable compensation for the service actually ren-

When performance of contract is prevented by death the representative recovers a rateable compensation.

dered, notwithstanding the contract is entire for the whole period.

CHAPTER II.

OF THE MODE OF COMMENCING SUIT.

SEC.
2160. All civil actions commenced by summons.
2161. Summons issued by a clerk accompanied by complaint.
2162. Form of a summons.
2163. Branch summons when defendants reside in different counties.
2164. Freeholders sued in their own counties except in actions relating to real estate, or in case of leaving county to avoid process.

Civil actions commenced by summons.

§ 2160. All civil actions in the courts of record of this state for the recovery of real estate or any interest therein, or for waste or trespass on land, or for the recovery of money or personal property, or for the recovery of damages, (except in such cases as is otherwise provided by this code), must be commenced by the service of a summons.

Summons issued by clerk and accompanied by the complaint.

§ 2161. The summons must be issued by the clerk of the court, and be accompanied by the complaint of the plaintiff, signed by him, or his attorney, setting forth the cause of action.

Form of the summons.

§ 2162. The summons must be in the following form:

The state of Alabama, } To any sheriff of the state of
County. } Alabama. You are hereby commanded to summon A. B., to appear at the next term of the circuit court to be held for said county, at the place of holding the same, then and there to answer the complaint of C. D.

Witness my hand, this day of, E. F., clerk.

Branch summons when there are several defendants in different counties.

§ 2163. When any joint or joint and several cause of action exists, and the defendants reside or may be found in different counties, a summons may issue from the court having jurisdiction of any one of such defendants, and be executed in any county, which must be returned and filed in the court from which the process issued, and constitute but one suit, in the same manner as if but one summons had issued against all the defendants: and it is the duty of the clerk, on issuing such branch summons, to indorse thereon that it is a branch of the original suit, and that all the summons constitute one suit and are for one and the same cause of action.

Freeholders sued only in their own counties, except for injuries to or recovery of real estate.

§ 2164. No freeholder of this state, having a permanent residence within it, must be sued out of the county of his residence, unless the suit be for the recovery of real property or the possession thereof, or for a trespass thereto, when the suit must be instituted in the county where the land lies. Any summons issuing contrary to the provisions of this section must be abated on the plea of the defendant.

CHAPTER III.

OF THE ISSUE, EXECUTION, AND RETURN OF THE SUMMONS.

SEC.
2165. Summons executed by leaving a copy of the summons and complaint.
2166. Summons to be executed three days before return, when returned, &c.
2167. If issued less than three days before return day it is returnable to the succeeding term.
2168. Return day is first day of the term.
2169. Served on corporation by leaving copy with the president, &c.
2170. If officers unknown, left with any white agent.
2171. When executed by coroner or special coroner.
2172. State sued by summons to the governor.
2173. When executed in an adjoining county.
2174. County sued by serving on judge of probate.

Summons executed by leaving a copy; return.

§ 2165. The summons must be executed by the sheriff or other officer, in any county in the state, by leaving a copy of the summons and complaint with the defendant, which fact he must return with the process.

Summons; how executed and returned. If executed twenty days before return day; how returned.

§ 2166. The summons must be executed at least three days before the return day thereof, and be returned to the office whence it issued, on or before the return day; but when the summons has been executed twenty days or more before the return day, it must be returned five days after the execution thereof.

Issued less than three days before return day.

§ 2167. Where the summons is issued less than three days before the term of the court next thereafter, it must be made returnable to the next succeeding term.

Return day is first day of the term.

§ 2168. The return day of the summons is the first day of the court to which it is returnable.

Summons to corporation, by copy left with the president, &c.

§ 2169. When the suit is against a corporation, the summons may be executed by the delivery of a copy of the summons, and complaint to the president, or other head thereof, secretary, cashier, or managing agent thereof.

When officers unknown summons left with any white agent.

§ 2170. If affidavit is made that the officers named in the preceding section are unknown, the summons may be served on any white person in the employ of, or doing business for such corporation.

Summons when executed by coroner, &c.

§ 2171. In the cases provided for by Chapter three, Title ten, Part one, the summons must be directed to and served by the coroner, or special coroner, as the case may be.

Summons left with governor when state is sued.

§ 2172. When the state of Alabama is a defendant, the summons must be executed by leaving a copy of the summons and complaint with the governor.

When executed in an adjoining county.

§ 2173. When a summons issues to the sheriff of the county in which the defendant resides, he may execute it in an adjoining county, if the defendant is there found.

Summons to a county executed on judge of probate.

§ 2174. When a county is defendant, the summons must be executed by leaving a copy of the summons and complaint with the judge of the probate court.

CHAPTER IV.

OF ARREST AND BAIL.

SEC.
2175. Bail, when required in defendant's own county.
2176. Bail in qui tam or damage suits.
2177. How required when suit is pending.
2178. All bail is special bail.
2179. Condition of the bail bond.
2180. Payable to plaintiff and returned with the summons.
2181. Sheriff liable for taking insufficient bail.
2182. Mode of obtaining discharge from arrest.
2183. Notice of schedule given plaintiff, who may contest it.
2184. Verdict of the jury discharges or imprisons the defendant.
2185. Appeal to circuit court. Bond on appeal.
2186. Property in schedule sold by sheriff for the plaintiff.
2187. Proceeds rateably divided among plaintiffs.
2188. Bail may arrest and surrender his principal.
2189. Debtor's imprisonment in the penitentiary discharges.
2190. Liability of bail, on judgment against principal.
2191. Bail pays the costs on surrendering the debtor.

Bail required of defendant in his own county in civil cases on the making of certain affidavits.

§ 2175. The defendant may be held to bail in the county of his residence, in a civil action, but the plaintiff or his agent must make affidavit before the clerk of the court or some judicial officer, of the amount of the indebtedness of the defendant, and in addition thereto make one of the following oaths in writing:

1. That the defendant is about to abscond.
2. That he has fraudulently disposed of his estate or effects.
3. That he is about fraudulently to dispose of his estate or effects.
4. That he has money liable to the satisfaction of his debts which he fraudulently withholds.

Upon making the above affidavit, with either of the alternate oaths here recited, and giving security for costs, the clerk must indorse upon the summons that the sheriff hold the defendant to bail in double the amount sworn to be due.

Bail in qui tam or damage suits.

§ 2176. When the action is qui tam or sounds in damages merely, the clerk or judge of the circuit court in which the suit is instituted, may order the defendant to be held to bail in such sum as may seem proper, on the affidavit of the plaintiff or his agent of the facts, and some one of the causes specified in the preceding section.

Bail; how required while suit is pending.

§ 2177. While the suit is pending and before final judgment, bail may be required in like manner by the plaintiff, on his making the affidavit prescribed in the two preceding sections, and giving security for costs, and thereupon the clerk must issue an alias summons, with an order indorsed thereon, requiring the sheriff to hold the defendant to bail.

All bail special bail.

§ 1278. All bail is special bail.

Condition of the bail bond

§ 2179. The condition of the bail bond is, that should judgment be rendered against the defendant, he will satisfy it or surrender his body, or the bail will do it for him.

Payable to plaintiff and returned with the summons.

§ 2180. The bail bond must be made payable to the plaintiff and returned to the clerk with the summons by the sheriff.

Sheriff liable for taking insufficient bail.

§ 2181. If the sheriff neglect to take bail or take insufficient bail, he is responsible to the plaintiff as bail; but the plaintiff must notify the sheriff, by filing exceptions at the first term of the court, or he will be discharged.

§ 2182. When the defendant has thus been arrested, he may obtain his discharge:

When defendant is arrested he may be discharged upon affidavit that the ground of his arrest is untrue.

1. By making affidavit before some one qualified to administer an oath, that the particular fact sworn to by the plaintiff, to hold him to bail, is untrue, and that he has no property within the state of Alabama to satisfy the debt or any part thereof. Upon the delivery of this affidavit to the arresting officer, he must immediately discharge the defendant from custody, making return thereof, and return the affidavit with the process to the proper court.

Or by rendering a schedule, &c.

2. By rendering a schedule of all his estate, money and effects of every kind, real and personal, in possession and in expectancy within the state, subject to levy and sale by execution, and of all things in action in his possession or under his control, accompanied by an affidavit made before a justice of the peace, that the schedule rendered is true, excepting only those articles exempt from levy and sale by law, and that he has not conveyed or concealed any thing for his own use or to defraud his creditors.

One day's notice to be given plaintiff of the schedule and he may contest it on oath: a jury then tries the fact.

§ 2183. The defendant must give the plaintiff, his agent or attorney, at least one day's notice of the time and place of rendering such schedule, if resident in the county, and if the plaintiff, his agent or attorney controvert on oath the truth of the schedule, by swearing that he believes it to be false; it is the duty of the justice immediately to empannel a jury of twelve men to try the issue between the parties, which jurors are liable to challenge as in other cases.

If jury find the schedule false, judgment for costs and defendant remanded. If otherwise defendant discharged.

§ 2184. If the jury find the schedule to be false, judgment must be rendered against the defendant for the costs of the proceedings, and he must be remanded to the custody of the arresting officer; if the schedule is found to be correct, judgment must be rendered against the plaintiff for cost and the defendant be discharged from custody.

Either party may appeal to the circuit court. Bond and security required.

§ 2185. Either party may appeal to the circuit court, on entering into bond with surety in such sum as may be approved by the justice, with condition on the part of the plaintiff that he will pay all damages which may accrue to the defendant, and on the part of the defendant that he will appear at such court and abide its judgment.

Property in schedule vests in the sheriff to be sold for plaintiff.

§ 2186. When the defendant is discharged upon his schedule, the property therein described vests in the sheriff, and must be sold by him for the benefit of the plaintiff, whether the property so rendered consists of real or personal estate, or any interest therein, or of things in action.

If arrested in more than one suit, the

§ 2187. If the defendant is arrested in more cases than one, the proceeds of the sale of the debtor's effects must,

proceed are rateably distributed.

after the payment of the sheriff's and magistrate's fees, be divided rateably in proportion to the debts, between the several plaintiffs.

Bail may arrest and surrender principal.

§ 2188. The bail has liberty at any time before final judgment against him, to arrest and surrender his principal either to the court from which the process issued, in term time, or to the sheriff in vacation, and such surrender is a discharge of the bail bond.

Notice of debtor's confinement in the penitentiary discharges the bail.

§ 2189. If the defendant is confined in the penitentiary or common jail, so that he cannot be delivered up by the bail, if the bail give notice in writing to the plaintiff of the fact of such imprisonment and that he desires to surrender his principal, it is in law a surrender and discharge of the bond; and on notice being given by the plaintiff to the jailor or warden of the penitentiary, the defendant must not be discharged from confinement at the expiration of his term of imprisonment, but must be delivered up to the sheriff of the court in which the cause is pending, who must retain him in custody until discharged by due course of law. But if not demanded within three days after such convict is entitled to his discharge, he must be set at liberty.

Liability of bail on judgment against principal.

§ 2190. No proceeding can be had against the bail to subject him to the payment of the judgment against his principal, until an execution against the body of the defendant has been returned "not found," and then judgment may be obtained against the bail, by motion to the court in which the judgment was rendered, ten days' notice thereof in writing being given; the motion must state concisely the grounds upon which the recovery is sought, and judgment thereon must be given at the first term, unless good cause is shown for a continuance.

When debtor is surrendered bail pays the costs.

§ 2191. When the principal is surrendered after notice given under the preceding section, judgment for cost must be rendered against the bail.

CHAPTER V.

FOR THE RECOVERY OF PERSONAL PROPERTY IN SPECIE.

SEC.
2192. In actions of detinue the plaintiff may give bond and require the sheriff to seize the property if bond be not given.
2193. On neglect to give bond, the property is delivered to the plaintiff on his giving bond.
2194. Verdict in detinue to assess value of each item and damages for detention. Judgment in such suits.
SEC.
2195. On failure to deliver property after judgment, execution issues on the bond.
2196. Bonds taken by sheriff to be returned in ten days. Penalty for neglect.
2197. Delivery of property compelled by attachment or distringas.

In action to recover personal property.

§ 2192. When a suit is brought for the recovery of personal chattels in specie, if the plaintiff, his agent or attorney

make affidavit that the property sued for belongs to the plaintiff, and execute a bond in such sum and with such surety as may be approved by the clerk, with condition that if the plaintiff fail in the suit, he will pay the defendant all such costs and damages as he may sustain by the wrongful complaint, it is the duty of the clerk to indorse on the summons that the sheriff is required to take the property mentioned in the complaint into his possession, unless the defendant give bond payable to the plaintiff, with sufficient surety, in double the amount of the value of the property, with condition that if the defendant is cast in the suit he will, within thirty days thereafter, deliver the property to the plaintiff and pay all costs and damages which may accrue from the detention thereof.

ty (detinue) the plaintiff, on making oath and giving bond, has an order indorsed on the summons that the property be taken or bond given, unless defendant gives bond to deliver the property if recovered.

§ 2193. If the defendant neglect for five days to give such bond, the property sued for must be delivered to the plaintiff, on his giving bond, with sufficient surety, in double the value of the property, payable to the defendant, with condition to deliver the property to the defendant within thirty days after judgment, in case he fail in the suit, and to pay damages for the detention of the property and costs of suit. If the plaintiff fail for five days to give such bond, after the expiration of the time allowed the defendant, the property must be returned to the defendant.

On neglect of defendant to give bond for five days, property to be delivered to plaintiff on his giving bond.

§ 2194. Upon the trial of any cause for the recovery of property in specie, the jury must, if they find for the plaintiff, if practicable, assess the value of each article of the property separately, and also assess damages for its detention; if they find for the defendant, they must in like manner assess its value; and if in the possession of the plaintiff, assess the damages for its detention. Judgment against either party must be for the property sued for, or its alternate value, with damages for the detention to the time of trial.

Value of each article to be assessed separately, with the damages for its detention.

Judgment in such suits.

§ 2195. If either of the parties who are unsuccessful in the suit, fail within thirty days after judgment to deliver the property to the sheriff, and return be made thereof by him of the fact, the bond in either case has the force and effect of a judgment, and execution may issue thereon against all the obligors, for the alternate judgment so rendered as aforesaid, and the damages and costs.

On failure to deliver the property after judgment execution issues on bond.

§ 2196. All bonds taken under sections 2192 and 2193, must be returned within ten days thereafter, to the clerk of the court in which the suit is pending, and, on failure, the sheriff is liable to the successful party, to the amount of the value of the property, and the damages for its detention as assessed by the jury, with interest thereon from the rendition of the judgment, to be recovered by motion to the court in which such judgment was rendered, on three days' notice; or may be at any time compelled to make such return by attachment.

Bonds in detinue suits to be returned by sheriff to clerk of court within ten days.

Penalty.

§ 2197. Any party recovering specific property, may compel its restoration, when practicable, by a writ of distringas, or by moving for an attachment.

Delivery compelled by attachment or distringas.

CHAPTER VI.

OF REAL ACTIONS.

SEC.
2198. Seal not necessary to pass legal title to lands.
2199. On recovery of land with a growing crop possession retained to gather crop, on giving bond for rent.
2200. Bond filed with the clerk, and has the force of a judgment.
2201. Suggestion of adverse possession for three years, to be tried by a jury.
2202. If found to be true, the verdict must show the value of the land, the improvements, and the rent.
2203. If value of improvements greater than the rent, possession retained for one year.
2204. On failure to pay within the year, the defendant on paying the value of the land, becomes the owner.
2205. Landlord made a party on his motion.
2206. Actions for use and occupation of land, when sustained.
2207. Damages to the time of the verdict.
2208. Rent accrued after judgment, recovered on motion.
SEC.
2209. Statement of demise to plaintiff and ouster by casual ejector omitted, but the law applicable to actions of ejectment, applies.
2210. Statement of plaintiff's possession and description of the land, with charge of entry by defendant, is all that is required.
2211. Defendant may demand abstract of plaintiff's title.
2212. Plea of not guilty, admits the same evidence as in ejectments.
2213. Such plea admits possession; disclaimer, in whole or part.
2214. If there be several defendants, damages may be assessed severally.
2215. Tenant not claiming title, liable only for rent in arrear.
2216. Persons having color of title, "bona fide," liable only for one year's rent.
2217. Verdict for plaintiff, to specify for what part.
2218. Judgment by default, admits title, but possession to be proved to recover costs.
2219. Two verdicts bar another suit.

Any writing though unsealed, showing an intention to convey, passes the legal title to land.

§ 2198. A seal is not necessary to convey the legal title to land, to enable the grantee to sue at law. Any instrument in writing, signed by the grantor or his agent, having a written authority, is effectual to transfer the legal title to the grantee, if such was the intention of the grantor, to be collected from the entire instrument.

On recovery of land with a crop planted, possession to be retained, to gather the crop, on giving bond for rent.

§ 2199. In actions for the recovery of land or the possession thereof, if it be made to appear that the defendant has a crop planted or growing on the premises, if the jury find for the plaintiff, they must also find the value of the premises during the current year, and no writ of possession can be issued until the expiration of the year, if the defendant executes a bond in double the amount of the rent, payable to the plaintiff, with surety, to be approved by the clerk, with condition to pay the rent so assessed at the expiration of the year.

Bond filed with the clerk and has the force of a judgment.

§ 2200. The bond so taken must be filed in the clerk's office; has the force and effect of a judgment; and if not paid at maturity, the clerk, on the application of the plaintiff, must issue execution against all the obligors.

Suggestion of adverse possession for three years

§ 2201. When suit is brought to recover land, or the possession thereof, the defendant may at any time before the trial, suggest upon the record, that he, and those whose pos-

session he has for three years next before the commencement of the suit, had adverse possession thereof. In such case, if the jury find for the plaintiff, they must also ascertain by their verdict whether such suggestion be true or false.

to be tried by jury. 2 Ala., 54; 4 Ala., 360; 13 Ala., 31.

§ 2202. If they find it to be false, they must return a verdict as in ordinary cases for the damages; if they find it to be true, they must assess the value, at the time of the trial, of the permanent improvements made by the defendant, or those whose estate he has, and also ascertain by their verdict the value of the lands and tenements, and of the use and occupation of the land, not including the increased value thereof by reason of such improvements; if the value of the use and occupation as assessed, exceed the value of the permanent improvements made, judgment must be rendered against the defendant for the excess.

If found to be true the verdict to show the value of permanent improvements, &c., and value of land without improvements and of its rent, &c.

§ 2203. If the value of the improvements exceed the value of the use and occupation, no writ of possession shall issue for one year after the rendition of the judgment, unless the plaintiff or his legal representative pay the defendant, or deposit with the clerk for him, the excess of the assessed value of the improvements over the value of the use and occupation.

If the value of improvements is greater than rents, &c., no writ of possession to issue for a year unless plaintiff pays it.

§ 2204. If the plaintiff, or his legal representative, neglect to pay such excess for the term of one year, and the defendant, or his legal representative, within three months after the expiration of the year, pays to the clerk of the court, for the use of the plaintiff, the value of the lands and tenements as assessed by the jury, the plaintiff is forever barred from his writ of possession, and from maintaining any action whatever against the defendant, his heirs, or assigns, for the recovery of such lands and tenements, or the possession thereof.

If not paid by plaintiff for one year defendant on payment of value of land acquires a good title.

§ 2205. When the suit is against a tenant, the landlord must, on his motion, be made defendant.

Landlord on his motion made a party 4 Ala., 156; 5 Ala., 919; 11 Ala., 239; 12 Ala., 165; 16 Ala., 77.

§ 2206. A reasonable satisfaction may be recovered for the use and occupation of land:

1. When there has been a demise by deed, or by parol, and no specific sum agreed on as rent.

2. Where, after a demise, the tenant holds over without any further agreement for rent.

3. When the tenant has been let into possession upon a supposed sale of the lands, which from the act of the tenant has not been consummated.

4. When the tenant remains on the land by the sufferance of the owner.

Actions for use and occupation; when sustained.

§ 2207. Damages in real actions, for the possession or use and occupation of land, must be computed to the time of the verdict.

Damages to time of the verdict.

§ 2208. The plaintiff, in a real action, may have judgment against the defendant for the rent of the premises which accrues after judgment, and before delivery of possession, by motion in the circuit court where the judgment was rendered, ten days' notice thereof in writing being given, unless the judgment is stayed by appeal, and bond given to supersede

Motion for rent accrued after judgment.

the judgment; in which case the motion may be made after the affirmance thereof.

Casual or nominal ejector not named in the proceedings, and no lease or demise to be stated.

§ 2209. Actions to recover the possession of land may be brought in the nature of an action of ejectment, without any statement of any lease or demise to the plaintiff, or ouster by a casual or nominal ejector; and in such cases, the law now in force in relation to the action of ejectment, except so far as relates to the fictitious proceedings therein, or except so far as the same is changed by this code, si applicable thereto.

Statement of the plaintiff's claim, and description of land, with defendant's unlawful entry is all that is required.

§ 2210. It is sufficient for the plaintiff to allege in his complaint, that he was possessed of the premises sued for, describing the same by its designation at the land office; or when that cannot be done, by metes and bounds, or other appropriate designation; and that after his right accrued, the defendant entered thereupon and unlawfully withholds and detains the same.

Defendant may demand an abstract of plaintiff's title.

§ 2211. The defendant may, by notice in writing to the plaintiff or his attorney, five days before the trial of the cause, demand an abstract in writing of the title or titles on which he will rely for a recovery, and the plaintiff must be confined to the proof of such title or titles.

Plea of not guilty as in actions of ejectment.

§ 2212. The defendant may plead that he is not guilty of unlawfully withholding the premises claimed by the plaintiff, and upon such plea, may give the same matter in evidence as upon the plea of not guilty in the action of ejectment.

Plea of not guilty admits possession.

§ 2213. Such plea is an admission by the defendant that he is in the possession of the premises sued for, unless he states distinctly upon the record the extent of his possession, in which case it is an admission of possession to such extent only.

Disclaimer in whole a part.

When there are several defendants damages may be assessed severally.

§ 2214. Where there are more defendants than one, the jury may assess damages arising from the detention of the land, and injury thereto, in severalty, against each defendant for distinct damages.

Tenant claiming under another only liable for rent in arrear.

§ 2215. A tenant in possession, and asserting his right thereto under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought, and that which may accrue during the continuance of his possession.

Persons having color of title bona fide liable only for a year's rent.

§ 2216. Persons holding possession under color of title, in good faith, are not responsible for damages or rent for more than one year before the commencement of the suit.

Verdict for plaintiff to specify whether for whole or part

§ 2217. If the verdict is for the plaintiff, it must specify whether it is for the whole or a part only of the premises, describing such part, and judgment accordingly.

Judgment by default admits title but possession to be proved to recover costs

§ 2218. A judgment by default against a defendant, is an admission of title in the plaintiff; but to recover costs against the defendant, the plaintiff must prove possession of the premises, or some part thereof, at the commencement of the suit.

§ 2219. Two judgments in favor of the defendant in an

action of ejectment, or in the nature of an action of ejectment between the same parties, in which the same title is put in issue, is a bar to any action for the recovery of the same land or any part thereof, between the same parties or their privies, founded on the same title. Two verdicts bar any other suit.

CHAPTER VII.

OF DEFAMATION.

SEC.
2220. Reflection on a woman's chastity made actionable.
2221. Retraction of charge received in mitigation of damages.
2222. On retraction and tender of compensation, no costs recovered unless the verdict is larger.
2223. Receipt of the money is a release, except as to costs.
2224. Words used to be construed in their ordinary import.
2225. True statements as to public men do not subject the party to a prosecution.
2226. Truth of the words, or the circumstances under which spoken, &c., evidence under the general issue.

§ 2220. Any words, written, spoken or printed, of any female, married or unmarried, falsely imputing to her a want of chastity, are actionable, without proof of special damages. Charge of unchasteness actionable.

§ 2221. The defendant in an action of libel or slander, may prove under the general issue, in mitigation of damages, that the charge was made by mistake or through inadvertence, and that he has retracted the charge, and offered amends before suit, by publishing an apology in a newspaper where the charge had been thus promulgated; or verbally in the presence of witnesses, where the accusation was verbal or written, and had offered to certify the same in writing. Retraction of charge to be received in mitigation of damages.

§ 2222. If the defendant, after or before suit brought, make the recantation and amends recited in the preceding section, and also tender to the plaintiff a compensation in money, and bring the same into court, the plaintiff can recover no costs, if the jury believe and find the tender was sufficient. On retraction and tender of a sum no costs recoverable unless the verdict be larger.

§ 2223. The receipt of the money tendered, if before suit brought, is a bar to the action; if after suit, releases the defendant from all damages and costs, except the costs which may have accrued before the tender and receipt of the money. Receipt of the money is a release except as to costs incurred.

§ 2224. Every accusation of false swearing presumptively imports a charge of perjury; and every accusation importing the commission of a crime punishable by indictment, must be held presumptively to mean what the language used ordinarily imports. Language to be construed by its ordinary import.

§ 2225. In prosecutions for publications investigating the conduct of public men, when the matter published is proper for public information, the truth of the charges may be given in evidence. Truth of charges against public men may be proved.

§ 2226. In all actions of slander, verbal or written, the truth of the words spoken or written, or the circumstances Truth of the words spoken or written

evidence under the general issue.

under which they were spoken or written, may be given in evidence under the general issue, in mitigation of the damages.

CHAPTER VIII.

OF PLEADINGS.

ARTICLE 1. General rules.
" 2. Of the complaint.
" 3. Of the plea.
" 4. Of the replication and subsequent pleading.
" 5. Of demurrer.

ARTICLE I.

General rules.

SEC.
2227. Pleadings to be short, and not bad for want of form.
2228. On motion, pleadings struck out for prolixity.
2229. Character of complaint for defamation.
2230. Consideration of a sealed instrument may be inquired into.
2231. Assignment of breaches on a penal bond.
2232. New actions on same contract, when new causes arise.
2233. Profert of bond, &c., dispensed with, notice given to produce it or bill of particulars.

Pleadings to be short.

§ 2227. All pleadings must be as brief as is consistent with perspicuity, and the presentation of the facts or matter to be put in issue in an intelligible form; no objection can be allowed for defect of form, if facts are so presented that a material issue in law or fact can be taken by the adverse party thereon.

No objection taken for want of form.

Pleadings struck out for prolixity on motion.

§ 2228. If any pleading is unnecessarily prolix, irrelevant, or frivolous, it may be stricken out at the cost of the party so pleading, on motion of the adverse party; and any pleading which conforms substantially to the schedule of forms attached to this part, is sufficient.

No colloquium or inuendo is necessary. Statement required in the complaint.

§ 2229. No colloquium or inuendo is necessary in actions for defamation; it is sufficient to state in the complaint that defendant falsely and maliciously charged the plaintiff with perjury, larceny, or other crime, as the case may be, in substance as follows, setting it out.

Consideration of a sealed instrument may be enquired into.

§ 2230. The defendant may by plea impeach or inquire into the consideration of a sealed instrument, in the same manner as if it had not been sealed.

Assignment of breaches on penal bond.

§ 2231. In actions upon any penal bonds or other writing for the non-performance of any covenant or agreement contained therein, the plaintiff may assign such breaches as he may deem proper, and verdict and judgment may be rendered for such of the breaches as he may prove; and if judgment be rendered for the plaintiff on demurrer or by default,

Writ of inquiry on judgment by default.

a writ of inquiry of damages must be awarded.

§ 2232. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom. Successive actions may be maintained on the contract when new causes arise.

§ 2233. No profert of a sealed instrument is required in pleading, but at any time previous to the trial, the defendant may have inspection of the bond, or other instrument sued on, upon notice to the attorney of the party; or when an account is the foundation of the suit, a list of the items composing it. Profert of bond, &c., dispensed with, notice may be given to produce it, or items of account.

ARTICLE II.

Of the complaint.

SEC.
2234. Complaint to accompany the summons, and be signed by plaintiff or his counsel.
2235. All actions on contracts may be united in one complaint, except when breaches are to be assigned.

§ 2234. The complaint, which must in all cases accompany the summons, is in lieu of a declaration, and must be signed by the plaintiff or his attorney. Complaint to accompany the summons and to be signed by the plaintiff or his attorney

§ 2235. All actions on contracts, express or implied, for the payment of money, whether under seal or not, may be united in the same action; but a contract upon which it is necessary to assign a special breach, cannot be united in the same complaint with a contract on which no such breach is necessary. All actions on contracts may be united in one suit unless when breaches are to be assigned.

ARTICLE III.

Of the plea.

SEC.
2236. Plea to state the facts relied on as a defence; no objection to be made to the form.
2237. "Not guilty," covers all defences in defamation, or suits for injury to property or the person; special pleas required in all other cases.
2238. Pleas in abatement (except of matters of record) sworn to.
2239. Character of the plea determined by the subject-matter.
2240. Liquidated or unliquidated demands allowed as set-off, unless sounding merely in damages.
2241. Judgment for defendant for excess of set-off and costs.
2242. Judgments in same court set-off on motion.
2243. Surety sued alone may set-off a debt due the principal.
2244. Set-off not allowed to commercial paper negotiated before due.
2245. Tender to be made in court.
2246. When tender in court impossible from bulk, &c., readiness to deliver sufficient.
2247. Indorsement to be made on pleadings of the date of filing them, &c.
2248. Plea of "since the last continuance," does not waive former pleas to the merits.

§ 2236. The plea must consist of a succinct statement of the facts relied on, in bar or abatement of the suit, and no The plea to be a statement of facts

relied on in defence; no objection taken if issuable.

objection can be taken thereto, if the facts are so stated that a material issue can be taken thereon.

In what cases pleas must be special.

§ 2237. In all actions of defamation for injuries to the person, or to real or personal property, the plea of "not guilty" puts in issue all the material allegations of the complaint; in all other cases the defendant must briefly plead specially the matter of defence, and may, by leave of the court, plead more pleas than one.

All pleas in abatement sworn to.

Exceptions.

§ 2238. All pleas in abatement, (unless it be of matter of record,) pleas which deny the execution by the defendant, his agent, attorney or partner, of any instrument in writing the foundation of the suit, or the assignment of the same, or which sets forth any instrument in writing, whether under seal or not, which is alleged to be lost or destroyed, and pleas since the last continuance, must be verified by affidavit.

Character of plea; how determined.

§ 2239. The fact whether a plea is in bar or abatement, is ascertained by the subject matter and prayer of the plea.

Sets-off allowed in all cases of liquidated or unliquidated demands not sounding in damages.

§ 2240. Mutual debts, liquidated or unliquidated demands not sounding in damages merely, subsisting between the parties at the time of suit brought, may be set-off, one against the other, by the defendant or his personal representative, whether the legal title be in the defendant or not; and such set-off, if found for the defendant, extinguishes either in whole or in part, as the case may be, the plaintiff's demand.

Judgments in favor of defendant for excess of set-off and costs.

§ 2241. If the debt or demand so offered to be set-off, exceed the amount of the plaintiff's demand, the amount of such excess being found by the jury, judgment must be rendered against the plaintiff for costs, and in favor of the defendant for such excess.

Judgment in the same court may be set-off on motion.

§ 2242. Judgments in the same court may be set-off against each other, by the court on motion.

A comaker or surety sued alone may set-off a debt due to his principal at the date of the suit.

§ 2243. A comaker or surety when sued alone, may with the consent of his comaker or principal, avail himself, by way of off-set, of a debt or liquidated demand, due from the plaintiff at the commencement of the suit, to such comaker or principal.

Set-off not allowed to commercial paper negotiated before due.

§ 2244. The foregoing provisions relating to sets-off, do not apply to bills of exchange or notes payable in bank, or at a private banking house, which have been in good faith negotiated before maturity.

Tender to be made in court.

§ 2245. A plea of tender of money, or of a thing in action, must be accompanied by a delivery of the money, or such thing in action, to the clerk of the court.

If tender cannot be made from bulk, &c., a readiness to deliver to be averred.

§ 2246. If the tender be of ponderous articles, or other personal property, the plea must aver a readiness to deliver them to the plaintiff, and judgment for the defendant upon the plea, vests the title to the thing tendered in the plaintiff, subject to any claim the defendant may have for his trouble in keeping it.

Indorsement of date of filing to be placed on all pleas, and they are rejected for want of it.

§ 2247. All pleas must be indorsed by the clerk when filed, with the true date, and for want of such indorsement may be rejected by the court on motion, unless sufficient cause be shown.

§ 2248. A plea since the last continuance, is not a waiver of other pleas to the merits previously pleaded. Plea since last continuance does not waive any former plea to the merits.

ARTICLE IV.

Of the replication and subsequent pleadings.

Sec.
2249. General replication is joinder of issue.
2250. Special replication.
Sec.
2251. More than one replication may be allowed by the court.
2252. Rules of this article apply to all subsequent pleadings.

§ 2249. The general replication is, the plaintiff joins issue on said plea. General replication.

§ 2250. A special replication, like the plea, is a brief statement, in plain intelligible language, of the facts relied on as an answer to the plea. Special replication.

§ 2251. By leave of the court, for causes shown, the defendant may file more than one replication. Double replication allowed by the court.

§ 2252. The rules of this article in relation to pleas and replications, apply to all subsequent pleadings. Rules of this article apply to all pleadings.

ARTICLE V.

Of demurrers.

Sec.
2253. Special demurrers abolished; demurrer must set out specifically the grounds relied on.
2254. Amendments allowed, after judgment on demurrer.
Sec.
2255. Plea over, after judgment does not waive errors.
2256. Court imposes terms, for frivolous demurrer.

§ 2253. No demurrer in pleading can be allowed, but to matter of substance which the party demurring specifies; and no objection can be taken or allowed which is not distinctly stated in the demurrer. General demurrer only allowed and the ground to be distinctly stated.

§ 2254. Either before or after judgment on demurrer, the court must permit an amendment of the pleadings; and such amendment must cause no delay in the trial of the cause, unless injustice will thereby be done. Amendments allowed after judgment on demurrer and no delay to be allowed

§ 2255. The party against whom a judgment on demurrer is rendered, may plead over as a matter of right, without waiving his privilege of assigning the judgment on demurrer, as error in an appellate court, unless he has subsequently had the benefit secured by the demurrer, upon the trial of other equivalent issues. On judgment on demurrer plea over does not waive errors.

§ 2256. If in the opinion of the court, a demurrer is interposed without cause, terms may be imposed, not exceeding the costs of the action or a continuance of the cause. Terms for a frivolous demurrer.

CHAPTER IX.

OF THE TRIAL AND ITS INCIDENTS.

Sec.	
2257.	Cause tried at return term. if summons executed twenty days before court.
2258.	Time for pleading when the term is more than a week.
2259.	Other pleadings filed when ordered by the court.
2260.	Plea filed in two days, if court sits only a week.
2261.	Causes set for special days when the term is more than one week.
2262.	Challenge of jurors.
2263.	Selection, summoning and oath of jurors.
2264.	Struck jury, when allowed and how selected.
2265.	Only two counsel to speak on each side.
2266.	Non-suit to be taken before jury leaves the box. Two non.suits equal to a verdict.
2267.	Only two new trials granted to a party in the cause.
2268.	Copy may be filed on loss of original pleadings.
2269.	Jury take with them the written evidence.
2270.	Court may order consolidation of suits.
2271.	Suits dismissed in vacation.
2272.	Citizens competent jurors and witnesses when the state, county or town is interested.
2273.	Notice to the attorney is notice to the client; sheriff's return evidence of service.
2274.	Charge of the court to the jury.
2275.	Employment of sworn interpreters.

Cause tried at return term if summons is executed twenty days before.

§ 2257. When the summons is executed twenty days previous to the return term thereof, it must be placed on the trial docket and stand for trial at the first term, unless good cause be shown for a continuance.

Time for pleading if the term is more than a week.

§ 2258. When the term of the court is more than one week, the defendant must within the three first days of the return of the summons, plead or demur to the complaint, and the replication thereto must be filed within three days thereafter, unless the time be enlarged by order of the court.

Other pleadings filed when ordered by court.

§ 2259. Other pleadings may be filed within such time as the court directs.

If only a week plea to be filed in two days.

§ 2260. When the term of the court is but one week, the plea must be filed within the two first days, and the issue be made up, within the two succeeding days, unless the time is extended by the court.

When term is over a week causes set for particular days.

§ 2261. The trial causes must be set for particular days, where the term of the court is more than one week; to which day the witnesses must be subpœnaed; and no cause can be called for trial before the day for which it is set but by consent.

Challenge of four jurors.

§ 2262. Each party has the right to challenge four of the jury peremptorily.

Jurors; how drawn, sworn, &c.

§ 2263. Jurors for the trial of civil causes are drawn, summoned, empannelled, and sworn as directed by the provisions of Chapter six, Title second, Part four.

Struck jury; when allowed. 7 Ala., 135.

§ 2264. In all civil causes sounding in damages merely, or where the amount in controversy exceeds one hundred dollars, either party may demand a struck jury, and must thereupon be furnished by the sheriff with a list of twenty-four jurors, in attendance upon the court, from which a jury must

be obtained by the parties or their attorneys, striking alternately one from the list, until twelve are stricken off; the party demanding the jury commencing; and the jury thus obtained, must not be challenged for any cause. Not to be challenged.

§ 2265. But two counsel can argue on a side but by leave of the court. Two counsel only to argue on one side.

§ 2266. Non-suits must be taken before the jury retires, and two non-suits not set aside at the term at which they are suffered, or reversed on error, are equivalent to a verdict against the party suffering them. Non-suits; when to be taken. Two equivalent to a verdict.

§ 2267. No more than two new trials on the same side can be granted in any cause. Two new trials granted in a cause.

§ 2268. If an original pleading be lost, or withheld by any person, the court may order a copy to be filed in the place of the original. On loss of pleadings a copy may be filed.

§ 2269. All instruments of evidence and depositions read to the jury, may be taken out by them on their retirement. Jury take out written evidence.

§ 2270. Whenever two or more actions are pending at the same time between the same parties, in the same court, and which might have been joined, the court may order them to be consolidated. Court may order consolidation of suits.

§ 2271. The plaintiff may dismiss his suit in vacation by causing an entry to be made by the clerk on the docket of the dismissal of the suit. When the summons has been executed, notice must be given the defendant of the intended dismissal. Suits; how dismissed in vacation.

§ 2272. In actions for the recovery of penalties, where a part thereof may enure to the state, county, or corporate town, or city, any citizen of the county, state, town or city, is a competent juror or witness. When the state, county or city is interested the citizens are competent jurors and witnesses.

§ 2273. Written notice to the attorney of record is as effectual as notice to the party to be affected by it, and may be executed by the sheriff, whose return of service is evidence of the fact. Notice in writing to the attorney is notice to his client.

§ 2274. The court may state to the jury the law of the case, and may also state the evidence where the same is disputed, but shall not charge upon the effect of the testimony unless required to do so by one of the parties. Charge of the court to jury.

§ 2275. Interpreters may be sworn, truly to interpret when necessary. Interpreters.

CHAPTER X.

OF EVIDENCE.

ARTICLE 1. Of general rules.
" 2. Of the mode of procuring testimony by subpœna.
" 3. Of procuring testimony by deposition.
" 4. Examination of the parties by interrogatories.
" 5. Proceedings to perpetuate testimony.
" 6. Demurrers to evidence.

ARTICLE I.

Of general rules.

SEC.
2276. Negroes, Indians, mulattoes, &c., not competent witnesses except for and against each other.
2277. Consideration to be proved by two witnesses in all suits against Indians.
2278. Effect of written contract as evidence of consideration, impeached by plea.
2279. Execution of notes purporting to be signed by defendant, impeached only by sworn denial.
2280. No proof required of execution of notes or assignment, unless denied on oath.
2281. Partnership not required to be proved, unless denied on oath.
2282. Releases, receipts, &c., have effect as such without seal.
2283. Compromises of debts for less sums sustained, without seal or new consideration.
2284. Sheriff may justify under process regular on its face.
2285. Rate of interest in other states, how proved.
2286. Security made a competent witness, by deposit of indemnity in court.
2287. Nominal plaintiff competent.
2288. Defendant against whom there is no evidence, is competent.
2289. One defendant, competent against another.

SEC.
2290. Assignee not competent to prove the cause of action; exceptions.
2291. Defendant in execution or mortgage, not competent for claimant.
2292. Register's receipts vest the legal title to land.
2293. Proof of statutes of other states or United States.
2294. Authentication by certificate of chief of a bureau or department.
2295. Copies of official bonds and other instruments required by law, to be kept by sworn officer, are evidence.
2296. Private acts of state legislatures received as evidence, without being pleaded.
2297. Patents evidence without proof.
2298. Entry by a physician, evidence of the service, but value of the services must be proved.
2299. Prices current, evidence of value of the articles at their date.
2300. Effect, as evidence, of registers of births, marriages and deaths.
2301. Evidence given in open court on oath, &c.
2302. Convictions, crime, (except perjury,) nor interest in the subject-matter, do not disqualify witnesses. Restriction.

Negroes, mulattoes, Indians, &c., not competent witnesses except for and against each other.

§ 2276. Negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, must not be witnesses in any cause, civil or criminal, except for or against each other.

In suits against Indians the consideration to be proved by two witnesses.

§ 2277. When suit is brought to recover money or property from an Indian, the consideration must be proved by two credible witnesses.

Effect of written contract as evidence proof of consideration.

§ 2278. Every written contract, the foundation of the suit, purporting to be executed by the party sought to be charged, his partner, agent, or attorney in fact, is evidence of the existence of the debt, or that the party undertook to perform the duty for which it was given, and that it was made on sufficient consideration; but may be impeached by plea; and when so impeached, the burthen of proof is on the defendant.

Impeached by plea.

Execution of notes, &c., purporting to be signed only im-

§ 2279. All written instruments, the foundation of the suit, purporting to be signed by the defendant, his partner, agent or attorney in fact, must be received in evidence, with-

out proof of the execution, unless the execution thereof is denied by plea, verified by affidavit; and every assignment of such instrument, on which suit is brought in the name of the assignee, must be deemed genuine, unless impeached in like manner, when in either case the burthen of proof is cast on the plaintiff. Peached by plea under oath.

§ 2280. It is not necessary to prove the execution or assignment of any instrument offered in evidence under the plea of set-off, or other plea in bar, unless the plaintiff put the execution or assignment thereof in issue, by a replication, verified by affidavit. Execution or assignment of notes, &c., not proved unless denied on oath.

§ 2281. When suit is brought by a firm, or in the name of a partnership, the plaintiff must not be required to prove the existence of the firm, or the individuals composing it, unless the same is denied by plea, verified by affidavit. Partnership not required to be proved unless denied on oath.

§ 2282. All receipts, releases, and discharges in writing, whether of a debt of record, or a contract under seal, or otherwise, must have effect according to the intention of the parties to the same. Releases, receipts, &c., to have effect intended whether under seal or not.

§ 2283. All settlements in writing, made in good faith for the composition of debts, must be taken as evidence, and held to operate according to the intention of the parties, though no release under seal is given, and no new consideration has passed. Compositions of debts for a less sum sustained without release or new consideration.

§ 2284. Whenever it appears that the process is regular on its face, and is issued by the competent authority, a sheriff or other ministerial officer is justified in the execution of the same, whatever may be the defect in the proceeding on which it was issued. Sheriff may justify under process regular on its face, &c.

§ 2285. The secretary of state must cause to be printed in the pamphlet acts of each session of the legislature, the rate of interest of each of the states and territories of the United States, which must be received as presumptive evidence of the rate of interest aforesaid. Mode of proving rate of interest in other states.

§ 2286. A security, though a party to the suit, may be made a competent witness for his principal, by the deposit in court of the amount of his supposed liability, and a sufficient sum to cover the probable costs. Security competent by deposit of indemnity with the court.

§ 2287. A nominal plaintiff is a competent witness for the defendant. Nominal plaintiff competent.

§ 2288. A defendant against whom there is no testimony, is a competent witness for a codefendant. A defendant against whom there is no evidence is competent.

§ 2289. A defendant is a competent witness for the plaintiff against a codefendant. Defendant competent for plaintiff.

§ 2290. When suit is brought by the transferee of any contract, express or implied, the transferor, or party with whom the contract was originally made, is not a competent witness for the plaintiff, to prove the cause of action, except in such cases and under such restrictions as are provided by sections 2313, 2314, and 2315, and such other cases as are expressly provided for. Assignor not competent to prove the cause of action. Exceptions.

§ 2291. The defendant in execution or mortgagor, where

Defendant or mortgagor not competent for claimant on trial of right of property.

property levied on by execution is covered by a mortgage, are incompetent witnesses for the claimant, upon trial of the right of property.

Certificates of registers of land offices, &c., vest the legal title.

§ 2292. All certificates issued pursuant to any act of congress, by any board of commissioners, register of a land office, or by any one authorized by law to issue such certificate, upon any warrant or order of survey, or for any donation or preemption claim, vests the legal title in the holder, or his assignee, and must be received as evidence of such title.

Statutes of other states or of the United States; how proved.

§ 2293. Transcripts of acts of congress, or of the statutes of any state or territory of the United States, certified by the secretary of state of this state, as being deposited in his office; and public or private statutes, or the proceedings of any legislative body, purporting, on the face of the book, to be printed by the authority of the government, state, or territory, are evidence without further proof.

Certificate of head of a bureau or department sufficient authentication.

§ 2294. The certificate of the head of any bureau or department of the general government is a sufficient authentication of any paper or document appertaining to or belonging to his office.

Copies of official bonds and other instrument required by law to be kept by any sworn officer are evidence.

§ 2295. Copies of official bonds, or other instruments or papers, required to be kept by any officer of this state, and transcripts from the books and proceedings required to be kept by any sworn officer of the state, are presumptive evidence, in any civil cause, and have the same effect as if the original were produced and proved, upon the certificate of the custodian thereof that it is a true copy of the original; but the court may, on motion, require the production of the original, if practicable, when necessary to promote the ends of justice.

Private acts of this or another state given in evidence.

§ 2296. All private acts of the legislature of this or any other state, may be given in evidence without being specially pleaded.

Patents received in evidence without proof.

§ 2297. Patents issued by the United States, or any state of the United States, must be received in evidence without further proof.

Entry in his books by a physician evidence of service unless denied on oath.

Value of service to be proved.

§ 2298. The original entries in the books of a physician are evidence for him, in all actions brought for the recovery of his medical services, that the service was rendered, unless the defendant in open court deny upon oath the truth of such entries; but he is required to prove the value of such services. Where the denial is by a legal representative of she party, it is sufficient for him to swear that he believes it to be untrue.

Prices current evidence of value of articles at the date, &c.

§ 2299. Prices current and commercial lists printed at any commercial mart, are presumptive evidence of the value of any article of merchandize specified therein, at that place, at the date thereof, and of the rate of exchange between that and other places; also of the rates of insurance, freights, and the times of the arrival and departure of ships and other vessels.

§ 2300. Registers of marriages, births, and deaths, kept in pursuance of law, or by any ecclesiastical rule of any religious church, or society, may be certified by the custodian thereof, and are presumptive evidence of the facts certified, as well as of the law or rule in virtue of which such registry was made, and his authority to certify the same. Effect of registers of births, marriages and deaths.

§ 2301. All testimony, except as otherwise directed, must be given in open court on the oath or affirmation of the witness. Evidence to be in open court on oath

2302. No objection must be allowed to the competency of a witness in any legal proceeding, whether examined orally or by deposition, because the witness has been rendered infamous by a conviction for any crime, (except perjury or subornation of perjury), or because he is interested in the event of the suit, or liable for costs, unless the verdict and judgment would be evidence for him in another suit; but the objection for such cause goes to his credit only. This section is not to be construed so as to authorize persons or parties to be witnesses further than is authorized by the other provisions of this code, or to prevent any witness from being discredited by proof that he is unworthy of belief in a court of justice; nor must it change or qualify the mode or manner of establishing or proving the execution of conveyances of property or wills, as regulated by this code. No objection to competency of a witness for conviction of any crime but perjury. Or because interested in the event of the suit, unless the verdict or judgment would be evidence for him, &c. Restrictions.

ARTICLE II.

Of the mode of procuring testimony by subpœna.

SEC.
2303. Subpœna issues when cause is on the trial docket.
2304. No subpœna can issue for witness living one hundred miles from court, without affidavit, &c.
2305. Subpœna executed by the sheriff by leaving a copy, &c.
2306. Subpœna issued to each term until case is disposed of.
2307. Penalty for default by the witness.
2308. Proceedings to recover the penalty.
2309. Witness imprisoned for refusal to testify.
2310. Not discharged without bond to appear and testify.
2311. Witnesses exempt from arrest in civil cases while attending court, &c.
2312. Excuse made in court by written affidavit or oral examination.
2313. Plaintiff may prove his claim to the amount of three hundred dollars by his own oath.
2314. Five days' notice to be left with clerk or given defendant, that such proof will be made.
2315. Plaintiff not permitted to prove claims against executors, trustees, guardians, &c.
2316. Defendant may prove usury, unless plaintiff deny it on oath.
2317. Representative of defendant may use same defence.

§ 2303. At the request of either party, his agent or attorney, to any suit which is then pending, or where the complaint has been executed more than twenty days before the return day thereof, the clerk of the court where the suit is pending must issue subpœnas for witnesses, specifying therein the time and place for their appearance, the title of Subpœna to witness issues at the request of either party when the cause is on trial docket.

the suit, and the party at whose instance they are summoned, and commanding them to appear in conformity therewith, and give testimony.

Subpœna not to issue for witness living one hundred miles from court without affidavit, &c.

§ 2304. No subpœna can issue for a witness, residing more than one hundred miles from the place of trial, computing by the usual travelled route, unless the party summoning him make affidavit that the personal attendance of the witness is necessary to a proper decision of the cause, and that his deposition would be insufficient for that purpose; which must be indorsed by the clerk upon the subpœna.

How executed and by whom.

§ 2305. The subpœna must be directed to "any sheriff of the state of Alabama," and may be executed upon the witness, either personally or by leaving a copy at his place of residence, unless the subpœna is issued during term time, when it must be executed by personal service.

Subpœnas issued at each term till case is disposed of.

§ 2306. In civil cases, when the cause is not decided at the first term, witnesses must be summoned by the clerk, by the issue of a subpœna to each term, until the cause is determined, unless otherwise directed by the parties.

Penalty for default by witness.

§ 2307. Any witness who, after being summoned, fails to attend, pursuant to the mandate of the subpœna, and remain until his testimony is given, or he is discharged by the court, or the party summoning him, forfeits one hundred dollars for the use of the party summoning him.

Proceedings to recover penalty.

§ 2308. A conditional judgment must, on motion of such party, be rendered against such witness, and a notice issued to him that such judgment will be made absolute, unless he appear at the next court and render a good excuse for his default; and on being personally served with a copy of such notice, ten days before the next or any succeeding term, if he fail to appear, and render a satisfactory excuse for his default, such judgment may be made absolute, or reduced, as the court may direct.

Witness imprisoned for refusal to testify.

§ 2309. Any witness refusing to testify, unless privileged by law from testifying in the cause, must be committed to the jail of the county, there to remain without bail until he consent to testify.

Witness not discharged without bond to appear and testify.

§ 2310. No witness so imprisoned must be discharged at the adjournment of the court or after, until he give bond and security in an amount to be prescribed by the judge of such court, to be approved by the judge of probate, payable to the state, and conditioned to appear at the next term, and give evidence in the cause.

Witnesses exempt from arrest in civil cases while attending court, &c.

§ 2311. Witnesses are exempt from arrest in civil cases, whilst attending court in that capacity, or going to or returning therefrom, allowing one day for every twenty-five miles, travel by the usual route.

Witnesses' excuse made in court by affidavit or oral examination.

§ 2312. Witnesses failing for sufficient cause to attend court, may make their excuse by affidavit, or viva voce, in open court, which the court must hear, at any time, unless engaged in the trial of a cause, and if the excuse is sufficient, release the party from any fine imposed, without the payment of costs.

Plaintiff may prove his claim to the amount of three hundred dollars by his own oath, unless defendant denies it on oath.

§ 2313. In all suits upon contracts, where the defendant has been personally served with process, where the matter in controversy does not exceed three hundred dollars, the plaintiff is competent to establish the correctness of the demand by his own oath, if the defendant is a resident of the state, unless he in open court denies, upon oath, the truth of the facts proposed to be sworn to by the plaintiff.

Five days notice to be given defendant if residing in the county; if not, notice left with the clerk, &c.

§ 2314. The plaintiff must give the defendant, or his attorney, five days' notice of his intention to establish the demand by his own oath, unless the defendant resides out of the county, and has no attorney of record within the county, in which case a notice filed in the clerk's office five days has the same effect.

Does not apply when executors, &c., defendants.

§ 2315. The two preceding sections do not apply, when executors, administrators, trustees or guardians are defendants.

Defendant on giving notice may prove usury if plaintiff was the lender, unless plaintiff denies it on oath.

§ 2316. When usury is relied on as a defence, the defendant having given ten days' notice to the plaintiff or his attorney, of his intention to do so, is a competent witness to prove the usury, if the plaintiff was the lender, unless the plaintiff denies on oath, in open court, the truth of the facts proposed to be sworn to by the defendant.

Representative of the borrower may use the same defence

§ 2317. If the borrower be dead his legal representative is entitled to the benefit of the preceding section, by swearing that he believes the contract to be usurious.

ARTICLE III.

Of the procuring testimony by deposition.

SEC.
2318. Cases in which testimony may be taken by deposition.
2319. Steps taken before issue of commission.
2320. Interrogatories may be filed and notice given by the clerk.
2321. Mode of giving notice when party resides out of the county.
2322. Duty of the commissioner in executing the commission.
2323. Effect of commissioner's certificate and return.
2324. Fine for failure to appear before commissioner; pooceeding to recover it.
SEC.
2325. Commissioner to issue subpœnas for witnesses; default proved by his certificate.
2326. Depositions thus taken, read in evidence.
2327. Depositions, except of females, taken de bene esse.
2328. Objections to the whole deposition taken before trial and not afterwards.
2329. Fees of witnesses before commissioner, taxed in the bill of costs.

Cases in which testimony may be taken by deposition.

§ 2318. The evidence of witnesses may be taken by deposition, in civil cases by either party:

1. Where the witness is a female.

2. Where the witness from age, infirmity or sickness is unable to attend court.

3. Where the witness resides more than one hundred miles from the place of trial, computing by the route usually travelled, or resides out of or is absent from the state.

4. Where the witness is about to leave the state, and will probably not return until after the trial.

5. Where the claim or defence, or a material part thereof, depends exclusively on the evidence of the witness.

6. Where the witness is governor of the state, treasurer, comptroller, chancellor, judge, clerk or sheriff of a court of record, president, director or other officer of a bank incorporated in this state, post master or any other officer of the United States, practicing physician or lawyer, or is constantly employed on any steam boat or other water-craft, or about the engine or other machinery of any rail road, plank road or manufactory.

Commission to issue on filing affidavit of the grounds.

§ 2319. The party desiring to take such deposition, must make affidavit before a justice of the peace of the state or clerk of the court, setting forth some one or more of the above causes for taking such deposition, and that the witness is material, which must be filed in the cause, and thereupon the clerk must issue a commission to one or more persons to take such deposition, and prescribe the notice to be given to the opposite party or his attorney, of the time and place of taking it. If the party on whom the notice is to be served resides out of the county and has no attorney of record, it is sufficient to file the same with the papers in the cause, the length of time prescribed.

Notice to adverse party.

Or interrogatories filed and notice thereof given by the clerk.

§ 2320. Or the party after making affidavit may file with the clerk interrogatories to be propounded to the witness, of which he must give the opposite party or his attorney notice in writing, who has ten days thereafter to file cross interrogatories, to which the party filing the interrogatories may file rebutting interrogatories; after the expiration of the ten days a commission, accompanied by a copy of the interrogatories, cross and rebutting, if filed, must be issued by the clerk to take the deposition, which may be taken at such time and place as the commissioner shall appoint.

Notice when party resides out of the county.

§ 2321. If the party to whom notice is to be given under the provisions of the preceding section, resides out of or is absent from, and has no attorney of record within the county, notice may be given by filing the interrogatories in the office of the clerk for ten days.

Duty of the commissioner in executing the commission.

§ 2322. It is the duty of the commissioner to reduce the answers of the witness to writing or cause it to be done by the witness himself or some impartial person, as near as may be in the language of the witness, having first sworn him to speak the truth, the whole truth, and nothing but the truth; and the deposition when complete must be by him enveloped together with the commission and any document which may have been deposed to, sealed and directed to the clerk of the court where the cause is pending, with the title of the cause indorsed thereon.

Certificate of commissioner evidence of identity of witness and

§ 2323. The certificate of the commissioner of the manner, time and place of taking the deposition, and that he has personal knowledge of, or has had proof made before him of the

personal identity of the witness, shall be presumptive evidence of the facts stated by him, and the package may be sent by mail or by private conveyance to the clerk.

of time, place, &c., of taking deposition. Sent by mail.

§ 2324. Any witness whose testimony is thus required, and who fails on due notice to appear before the commissioner and give evidence, forfeits to the party aggrieved the sum of one hundred dollars, for which judgment may be rendered by the court where the cause is pending, five days' notice in writing having been given him, that such motion will be made; and is also liable at the suit of the party aggrieved, to an action for damages; but such witness may make his excuse as in other cases.

Fine for neglect to attend before the commissioner. Proceeding to recover it.

§ 2325. The commissioner has power to issue subpœnas for witnesses, which may be served by the sheriff or any constable, and the certificate of the commissioner that he failed to appear, together with the return of the officer, is proof of the fact.

Commissioner issues subpœnas for witnesses and failure proved by his certificate.

§ 2326. Any deposition thus taken, may be read in evidence, so far as the same is pertinent to the issue and legal evidence; and if the package bears no marks of violence or evidence of mutilation, must be presumed to be as it came from the hands of the commissioner, until the contrary is shown.

Depositions thus taken read in evidence. Presumed to be as when sent by the commissioner.

§ 2327. When the deposition of a witness is taken for any other cause than being a female, the deposition cannot be used, if it appear at the trial that the cause for which it was taken does not exist, unless such witness is dead, insane or resides more than one hundred miles from the place of trial.

Depositions, except of females, taken de bene esse.

§ 2328. All objection to the admissibility of the entire deposition in evidence, must be made before entering on the trial, and not after, unless the matter is not disclosed in the deposition, and appears after the commencement of the trial.

Objections to the whole deposition to be taken before trial.

§ 2329. Witnesses who attend and testify, with or without a subpœna, are on the certificate of the commissioner of the distance travelled, and number of days' attendance, &c., entitled to the same compensation as other witnesses, and the commissioner to twenty cents for every hundred words, all of which must be taxed in the bill of costs, upon the certificate of the commissioner.

Fees of witnesses before commissioner taxed in bill of costs.

ARTICLE IV.

Examination of the parties by interrogatories.

SEC.
2330. Interrogatories filed to adverse party on affidavit of materiality.
2331. Interrogatories served on him, or if a non-resident, commission to issue to examine him.
2332. Answers duly sworn to are evidence, &c.
2333. Impertinent questions need not be answered.
2334. Proceedings on failure to answer, or answer freely.
2335. The answer may be contradicted.
2336. All pertinent questions, not involving a prosecution, must be answered.

Interrogatories may be filed to the adverse party on affidavit of materiality.

§ 2330. Either party to any civil suit desiring the testimony of his adversary, may file with the clerk interrogatories to be propounded to him, with an affidavit that the answers thereto will be material testimony for him in the cause.

If the party resides out of state commission to issue to examine him, otherwise a copy of interrogatories served on him.

§ 2331. If the party whose testimony is required resides out of the state, the clerk must issue a commission to take his testimony, to which a copy of the interrogatories must be appended; if he resides within the state, the party desiring his testimony must serve him with a copy of the interrogatories, which may be executed by the sheriff.

Answers duly sworn to are evidence.

§ 2332. The answers to the interrogatories, duly sworn to before the clerk or any justice of the peace, are evidence in the cause, when offered by the party taking them.

If questions are impertinent they need not be answered, if answered may be suppressed.

§ 2333. If the interrogatories are not pertinent to the issue, or matter in dispute between the parties, there shall be no obligation to answer them; and if answered, the answers may be suppressed by the court at the trial.

Proceedings on failure to answer or to answer fully.

§ 2334. If answers to the interrogatories are not filed within sixty days after service of a copy of the interrogatories, or when the answers are not full or are evasive, the court may either attach the party and cause him to answer fully in open court, or continue the cause until full answers are made, or direct a non-suit or judgment by default to be entered.

The answer may be contradicted.

§ 2335. A resort to this mode of obtaining evidence does not preclude the party calling for it from adducing other proof of the same facts, or from contradicting it.

All pertinent questions not involving a prosecution must be answered.

§ 2336. Under the provisions of this article the party is bound to answer all pertinent interrogatories, unless by the answer he subjects himself to a criminal prosecution.

ARTICLE V.

Proceedings to perpetuate testimony.

SEC.
2337. Testimony may be perpetuated.
2338. Affidavit filed specifying the grounds.
2339. Order for examination, and notice to adverse party.
2340. If to a non-resident, made by publication.
2341. Contents of the notice.
2342. Applicant pays the costs.
2343. Examination of the witnesses.
2344. Examination reduced to writing, certified and filed in office with the other papers.
2345. Return of the sheriff proof of the facts stated.
2346. Depositions so taken evidence, if witnesses cannot be obtained.
2347. Effect of such depositions as evidence.
2348. Fees of judge of probate, register and sheriff.

Testimony may be perpetuated.

§ 2337. The testimony of a witness may be taken conditionally, and perpetuated as provided in this article.

Affidavit filed specifying grounds.

§ 2338. The applicant must make affidavit before a circuit or probate judge, or register in chancery, stating:

1. That he is a party, or expects to be a party to a suit, either at law or in equity, in a court of this state.

2. That the testimony of a witness, whose name and place of residence is stated, is necessary to the prosecution or defence of such suit, and generally the facts expected to be proved by such witness.

3. If such suit be not actually commenced, the name of the party who is expected to be adverse to the party in such suit, and his residence, and that he is of full age.

Order for examination and notice to adverse party.

§ 2339. Such judge or register must thereupon make an order allowing the examination of the witness, and if the adverse party, or the party expected to be adverse to the application, resides in this state, a copy of such application, and notice of the time and place of the examination, must be given to such adverse or expected adverse party, at least ten days before such examination.

If a non-resident notice by publication.

§ 2340. If such adverse party, or expected adverse party, is a non-resident, notice of such application must be given by publication in such paper as may be directed by the judge or register, for six successive weeks, and a newspaper containing such publication sent by mail to the residence of such adverse party, directed to him, once a week for the three first weeks of the publication.

Contents of the notice.

§ 2341. The notice as published must contain a copy of the application, and notice of the time and place of taking the examination, which must not be less than three months from the time of the first publication.

Applicant pays the costs.

§ 2342. The applicant must pay the expenses of the publication.

Examination of the witness

§ 2343. Upon the application and notice being returned executed by the sheriff, if such adverse or expected adverse party is a resident of the state, or upon proof of the notice required by section 2340 if a non-resident, such judge or register must take the deposition of the witness at the time and place appointed, and the examination, if necessary, may be continued from day to day until completed.

Examination reduced to writing certified and filed in office with the other papers.

§ 2344. Every question answered, or declaration of the witness, must be taken down, the deposition when completed carefully read to and subscribed by the witness, certified by the judge or register, and immediately thereafter filed in the office of the clerk of the circuit court of the county in which it was taken, with the order for the examination of such witness, the affidavit on which the same was granted, and the application and notice, with the return of service indorsed thereon by the sheriff, or the affidavit proving the publication and transmission of the papers containing the same, to such adverse party.

Return of the sheriff proves the facts stated.

§ 2345. The return of the sheriff on the affidavit so filed is presumptive evidence of the facts therein stated, and the clerk must record all the papers so returned to him.

Depositions taken evidence in any

§ 2346. If a trial be had between the persons in the affidavit described as parties actual or expectant, or their success-

subsequent trial if the witness be dead or insane.

ors in interest, upon proof of the death or insanity of the witness at the time of such trial, the deposition, or a certified copy thereof, may be given in evidence by either party.

Effect of such depositions as evidence.

§ 2347. The deposition so read in evidence has the same effect as the oral testimony or the deposition of such witness, and no other; and every objection to the witness, or to the relevancy of any question put to him or of any answer made by him, may be made in the same manner as if he was orally examined on the trial, or as if his deposition had been taken in the case.

Fees of the judge of probate, register and sheriff.

§ 2348. The judge of probate and register are entitled for copy of application, and taking questions, recording the same, and answers, to twenty-five cents for each hundred words; for the other duties, one dollar on each application, to be paid by the applicant. The sheriff for serving and returning the application, one dollar.

ARTICLE VI.

Demurrer to evidence.

SEC.
2349. When allowed.
2350. Effect of demurrer to evidence.
2351. Testimony to be written out and becomes part of the record.
SEC.
2352. If judgment be for plaintiff, and damages uncertain, the jury must assess the damages.

Demurrers to evidence; when allowed.

§ 2349. In all actions upon contracts, when the testimony on both sides is written, either party may demur thereto; when the testimony on either side is parol, the opposite party, having offered no parol testimony, may also demur thereto; and the other party must be required by the court to join in the demurrer.

Effect of a demurrer to evidence.

§ 2350. The effect of a demurrer to evidence, is an admission by the party demurring, of the truth of the evidence demurred to, and of every inference or conclusion which a jury could legally deduce therefrom; and devolves on the court the determination of the issue of fact between the parties, as well as the law.

Testimony to be written out, and becomes a part of the record.

§ 2351. Upon a demurrer to the evidence being tendered, the court must reduce the testimony to writing, or cause it to be done; which being signed by the judge, constitutes part of the record.

If judgment be for plaintiff the jury must assess the damages.

§ 2352. If the court determine the issue for the plaintiff, a jury must be immediately empannelled to ascertain the damages, if unliquidated; or the jury, if one has been empannelled, may be required to assess the damages conditionally, previous to their being discharged.

CHAPTER XI.

BILLS OF EXCEPTION.

SEC.
2353. Bills of exception taken during the trial.
2354. Bill to state the point excepted to, and when stated correctly, must be signed by the judge.
2355. Charges asked, to be in writing, and given or refused as asked.
2356. Supreme court hears evidence as to the point excepted to, when judge refuses to sign a correct bill.
2357. Plaintiff suffering a non-suit, may take a bill of exceptions.
2358. Such bills to be signed during court, or, by consent of counsel, within ten days after.

Bill of exceptions taken during the trial.

§ 2353. Either of the parties in any civil case during the trial of the cause, may reserve, by bill of exceptions, any charge, opinion, or decision of the court, touching the cause of action, and which would not otherwise appear of record.

Bill to state the point excepted to, and if correct must be signed, &c.

§ 2354. The bill must be tendered by the party supposing himself aggrieved, stating the point, charge, opinion, or decision, wherein the court is supposed to err, with such a statement of the facts as is necessary to make it intelligible; and if correctly stated, it is the duty of the presiding judge to sign the same, which thereby becomes a part of the record.

Charges asked must be in writing and given or refused as asked; and indorsed by the judge as a part of the record.

§ 2355. Charges moved for by either party, must be in writing, and must be given or refused, in the terms in which they are written; and it is the duty of the judge to write, "given," or "refused," as the case may be, on the document, and sign his name thereto; which thereby becomes a part of the record, and may be taken by the jury with them on their retirement.

Evidence received by supreme court as to refusal of judge to sign a correct bill of exceptions.

§ 2356. If the judge fail, or refuse to sign a bill of exceptions, the point or decision, and the facts being truly stated, he is guilty of a high misdemeanor in office, and the supreme court must receive such evidence of the facts as may be deemed by it satisfactory, and proceed to hear the cause, as if the bill had been signed by the court.

Plaintiff suffering a non-suit may take a bill of exceptions.

§ 2257. When from any decision of the court on the trial of a cause, it may become necessary for the plaintiff to suffer a non-suit, the facts, point, or decision, may be reserved for the decision of the supreme court by bill of exceptions, as in other cases.

Bills of exception to be signed in term time.

Exception.

§ 2358. No bill of exceptions can be signed after the adjournment of the court, during which the exception was taken, unless by consent of counsel in writing, when it may be signed within ten days thereafter, except in such cases as is otherwise provided.

CHAPTER XII.

OF THE REMOVAL OF THE TRIAL.

SEC.		SEC.	
2359.	Venue changed on motion of either party; changed but once.	2362.	Change of trial to new county formed where defendant resides.
2360.	Depositions of witnesses in the county taken on such change.	2363.	Clerk's duty in transmission of papers in such cases.
2361.	Subpœnas command attendance at place of trial.	2364.	Pay of messenger carrying the papers.

Venue may be changed on motion of either party.

§ 2359. Either of the parties to a civil suit, may move the court to change the venue, at any time before final trial, and the court is authorized to direct such change to the nearest county free from exception, as to either of the parties, to be determined by affidavits; the party applying for such change making affidavit, that he cannot have a fair and impartial trial, for reasons and causes therein set forth, in the county where the suit is pending. The same party cannot change the venue but once.

Venue not to be changed more than once.

Depositions of witnesses in the county may be taken on change of venue.

§ 2360. When there has been a change of venue, the party opposed to such change may, in civil cases, take the deposition of all witnesses residing in the county from which the venue has been changed, under the same rules and regulations as now provided by law for taking depositions in other cases.

Subpœnas to attend at the place to which the venue is changed.

§ 2361. It is the duty of the clerk of the court where the cause was instituted, or is pending, unless otherwise directed, to issue subpœnas to all witnesses, to attend the place to which the venue is changed.

Trial removed to new county if defendant resides in it.

§ 2362. In like manner, where new counties are formed out of old counties, the original papers of all unfinished business in the county where the defendant resided, with a transcript of all orders made in the cause, must be transmitted to the new county as soon as it is organized.

Clerk's duty on change of venue in transmission of papers, &c.

§ 2363. When a change of venue is directed, the clerk of the court must make a transcript of all the minutes, orders and proceedings in the cause, with his certificate, and the seal of his court annexed, that it is a true copy; which, together with all the original papers, he shall envelope and securely seal, with his name written across the seals, together with his certificate on the back thereof, that the enclosed papers, numbered from 1 to ——, include all the original papers in the cause, (naming it;) which attestation and certificate must be received as true, until the contrary is shown. This package he may deliver himself, or send by a messenger; and if not mutilated or defaced, must be presumed to be as it came from the hands of the clerk.

Pay of messenger having the papers.

§ 2364. The clerk or messenger is entitled to five cents per mile, and tolls and ferriages, going and returning, which must be paid in advance by the party applying for the change of venue. If paid by the opposing party, to be taxed in the bill of costs against his adversary.

CHAPTER XIII.

PROCEEDINGS WHERE SUIT IS BROUGHT, OR VERDICT IS RENDERED, FOR A LESS AMOUNT THAN THAT FOR WHICH THE COURT HAS JURISDICTION, AND CALCULATION OF INTEREST BY THE CLERK.

SEC.
2365. Non-suit if plaintiff sues or recovers a verdict, for a less amount than that for which the court has jurisdiction.
2366. Calculation of interest, &c., and damages on a bill, on judgment by default.
2367. Judgment on penal bond, only for amount due.

Suit dismissed if plaintiff sues for or recovers a less sum than limit of the court's jurisdiction.

§ 2365. If suit be brought on any moneyed demand, for a less amount than that of which the court has jurisdiction, the suit must be dismissed; or if suit be brought for such amount, and a less sum be recovered, unless the amount is reduced below that of which the court has jurisdiction, by a set-off successfully made by the defendant, the judgment must be set aside and the suit dismissed, unless he, or some one for him, make affidavit, which must be filed in the cause, that the amount sued for is actually due, and that a recovery for the true amount was prevented by failure of proof, the interposition of the statute of limitations, or some other sufficient cause, to be judged of by the court; and in that event, he must have judgment for the reduced sum.

Exceptions.

In judgments by default, &c., clerk calculates the amount of the debt if for a liquidated sum, or damages on a bill of exchange.

§ 2366. In all actions founded on any instrument of writing, ascertaining the plaintiff's demand, if judgment by default, nil dicit, or on demurrer be rendered for the plaintiff, such judgment may be entered up by the clerk, under the direction of the court, without the intervention of a jury; and the clerk must compute the interest; and in case of a bill of exchange, the damages, if any be due thereon.

Judgments on penal bond only for amount due.

§ 2367. In all actions which are brought on any penal bond, for the payment of money, whenever the plaintiff recovers, judgment must be entered for no more than principal and interest due on the bond.

CHAPTER XIV.

APPEALS FROM JUSTICES OF THE PEACE, AND CAUSES REMOVED BY CERTIORARI.

SEC.
2368. Appeals and cases by certiorari, tried at first term, &c.
2369. If for less sum than twenty dollars, tried without a jury.
2370. Damages, if taken for delay.
2371. Costs in such cases; discretion as to costs.
2372. On affirmance, judgment rendered against sureties.
2373. Not dismissed for defect in bond, Or, if party is willing and ready to amend it.
2374. Not tried at the first term unless on notice of five days, unless defendant reside in another county.

Appeals and certiorari from justice's judgment tried at first term without regard to defects in proceedings.

§ 2368. Appeals and writs of certiorari, from judgments of justices of the peace, must be tried at the first term, unless good cause be shown for a continuance, according to equity and justice, without regard to any defect in the summons or other proceeding before the justice.

If for less sum than twenty dollars to be tried by the court, if greater by a jury.

§ 2369. When the sum claimed does not exceed twenty dollars, the cause must be tried by the court, without the intervention of a jury. When it exceeds twenty dollars, upon an issue to be made up under the direction of the court and tried by a jury.

Damages if taken for delay.

§ 2370. If it appear that the appeal or certiorari was taken for delay merely, fifteen per cent. damages may be assessed.

Costs in such cases.

§ 2371. If the defendant appeals, or obtains a writ of certiorari, and the judgment of the circuit court is for less than the judgment of the justice, the court may tax either party with the costs, or both parties with any portion thereof. If the plaintiff appeals, and does not recover more than the amount for which the justice rendered judgment, he must be taxed with the costs.

On affirmance, judgment rendered also against sureties.

§ 2372. When the judgment is affirmed, on appeal or certiorari, judgment must be rendered by the court against the surety, as well as the principal, which must include the costs of the inferior and appellate court.

Appeals, &c., not dismissed for defect in bond if party is willing to amend it.

§ 2373. No appeal or certiorari must be dismissed for any defect in the appeal bond, or bond given to obtain the certiorari, if the party is willing to execute a sufficient bond or undertaking.

Appeals, &c., not tried at first term unless motion has been served for five days.

§ 2374. No appeal or certiorari shall be tried at the first term, unless it appear that five days' notice in writing has been given to the opposite party, his agent, or attorney, but in such case must be continued until the next term.

CHAPTER XV.

COSTS.

ARTICLE 1. Taxation and retaxation of costs.
" 2. Security for costs.

ARTICLE I.

Taxation and retaxation of costs.

SEC.
2375. Costs given to successful party.
2376. In actions for damages no more costs than damages allowed, when verdict is for less than twenty dollars.
2377. Defendant proving usury recovers costs.
2378. Costs of set-off, if sustained, to be recovered by defendant.
2379. Fees of witnesses for mileage and attendance.
2380. Certificates given witnesses of mileage and attendance.

SEC.
2381. Attendance, &c., proved in three days after judgment.
2382. Only one party to be charged by witness.
2383. Beneficial plaintiff pays the costs.
2384. Costs of transcripts from other courts, taxed in the bill.
2385. Fees for certificates, &c., taxed in the bill.
2386. Costs on a plea, "since the last continuance."
2387. Witness fees taxed and collected, paid to clerk for the witnesses.
2388. On refusal of payment after presenting certificate, witness may refuse to attend again.
2389. On abatement by death of defendant, plaintiff pays the costs.
2390. An attorney's fee taxed for defendants who succeed, when plaintiff recovers against the others.
2391. If the plaintiff fail as to one defendant, he recovers his costs of him.
2392. Only two witnesses charged for to prove one fact. Exception.
2393. Motion to refuse costs as to other witnesses made at trial term.
2394. Motion to retax the costs for excess, &c.
2395. On filing written exceptions to cost bill, sheriff ordered not to collect them till after the next term, &c.

Costs given to successful party in all suits.

§ 2375. The successful party in all civil actions is entitled to full costs, for which judgment must be rendered, unless in cases otherwise directed by law.

In actions for torts no more costs than damages recovered if verdict is for less than twenty dollars. Exception.

§ 2376. In all actions to recover damages for torts, the plaintiff recovers no more costs than damages, where such damages do not exceed twenty dollars, unless the presiding judge certifies that greater damages should have been awarded, and on failure to certify, judgment must be rendered against the plaintiff for such residue.

Defendant on proving usury recovers costs of plaintiff.

§ 2377. If it be made to appear that usurious interest has been intentionally taken or reserved, the defendant recovers full costs.

Costs of set-off, if sustained, to be recovered by defendant.

§ 2378. In all actions where a set-off is pleaded, and controverted, the defendant recovers his costs, sustained in establishing the set-off, though judgment be rendered for the plaintiff for a residue.

Fees and mileage of witnesses.

§ 2379. Witnesses are allowed one dollar and fifty cents per day in civil cases, also five cents per mile for each mile to and from their residence, by the usual travelled route, and all necessary ferriages, fees of turnpikes, and toll bridges, whether attending under subpœna, or at the request of the party.

Certificate of attendance, &c., to be given to witnesses by clerk.

§ 2380. After the trial, continuance of the cause, or discharge of the witness, the clerk must on his application, and upon his oath, give him a certificate, setting forth the cause in which he was a witness, the party by whom he was summoned, the number of days he attended as a witness, and the sum to which he is entitled for his attendance, travel, ferriage, &c., which he must also enter, either upon the subpœna docket, or book to be kept for that purpose.

Attendance to be proved in five days after adjournment.

§ 2381. The witness must prove his attendance, within five days after the adjournment of court at which the witness attended.

Only to charge one party.

§ 2382. No witness shall charge for his attendance but on one side of the same cause.

§ 2383. When judgment is rendered against the plaintiff

Costs against beneficial plaintiff.

in any suit brought in the name of a nominal plaintiff for the use of another, judgment for costs must be rendered against the beneficiary or his personal representatives.

Costs of transcript of other court taxed in the bill.

§ 2384. When the suit is founded on the record of another court, the costs of the transcript, on proof to the court, must be taxed in the bill of costs.

Legal fees for certificates on executions, &c., taxed as costs.

§ 2385. When either party introduces on the trial any execution, bond, or other matter of evidence, certified by any officer, or person whose certificate makes the copy thereof evidence, the fees allowed by law to such officer or person, for the transcript thereof and certificate, must be allowed as costs.

Costs on a plea "since the last continuance."

§ 2386. When the party filing a plea "puis darrien continuance," succeeds thereon, but fails on the plea to the merits, previously filed, he must be taxed with the costs which accrued previous to the filing the last plea.

Witness' fees taxed in the bill of costs, and collected by the sheriff for use of witnesses, and paid to the clerk.

§ 2387. Upon the final disposition of any civil cause, the amount so proved by the witnesses must be taxed in the bill of costs, against the rightful party, setting forth the name of each witness, and the amount allowed him, which must be collected by the sheriff for the use of such witnesses, and be paid to the clerk issuing the execution, unless the certificate of such clerk, with the receipt of the witness thereon, is produced to the sheriff.

If witness, on presenting his certificate, is refused payment he is excused from attending again in the cause.

§ 2388. The certificate granted as aforesaid, entitles the witness to demand of the party summoning him the amount therein stated, and is presumptive evidence that such amount is due, in any proceeding instituted for its recovery; and if in any civil cause, on demand thereof, of the party summoning him, or his agent, or in the case of his being a non-resident, of his attorney, the same is not paid, the plaintiff is not obliged to appear again as a witness in the same cause, until his witness fees are paid.

On abatement by death of defendant, &c., plaintiff pays the costs.

§ 2389. When a plaintiff brings a suit, which he suffers to abate by the death of the defendant, or other cause; or where the suit abates by the death of the plaintiff, and his representatives fail to revive the same, judgment for costs may be rendered against such representatives, in the name of the officers of the court, and are paid as other claims against such estate.

Attorneys fee taxed for defendants who succeed when plaintiff recovers against others.

§ 2390. When judgment is rendered in favor of one or more defendants, less than the whole number, an attorney's fee must be taxed in favor of such defendant, or defendants, against the plaintiff.

If plaintiff fails as to one defendant he recovers his costs of him.

§ 2391. When a plaintiff fails to recover against all of the defendants, the defendants against whom he fails to recover are entitled to have their aliquot proportion of the whole costs taxed against the plaintiff, except that provided for in the preceding section.

Only two witnesses to be subpœnaed to

§ 2392. Not more than two witnesses shall be taxed in any bill of costs, who were called to prove any one matter of fact, or having been subpœnaed, were not examined, un-

less the court, upon a motion to retax the costs, should in its discretion consider that the circumstances of the case warranted the examining or summoning more than two witnesses for the proof of a particular fact; or unless such witnesses were summoned or examined to assail or defend the reputation of a witness for veracity, or to assail or to establish the character of a party, when character is put in issue.

prove any one fact, and no costs taxed for a greater number.

Exception.

§ 2393. If more than two witnesses are examined in proof of any particular fact, a motion must be made, at the term at which the cause is tried, for instructions to the clerk as to the taxation of costs, and cannot be made afterwards.

Motion to refuse costs as to all but two witnesses, to be made at trial term.

§ 2394. If the taxation of costs be excessive, by charging the costs of witnesses who were not examined, or by charging costs to an improper party, or taxing costs contrary to law, the party aggrieved may move the court for a retaxation, setting forth the particulars in which the clerk has erred.

Motion to retax the costs for excess.

§ 2395. If execution has issued in any such case, the party complaining thereof, or his attorney, may file a written application with the clerk for a retaxation of the costs, setting forth in what the alleged error consists, and the clerk must issue an order to the sheriff, directing him to abstain from the collection of the disputed items of costs until the further order of the court, to which a motion must be made, at the ensuing term, for a retaxation thereof.

On filing written exceptions to items of cost bill, clerk to order sheriff not to collect such items until the further order of the court.

ARTICLE II.

Security for costs.

SEC.
2396. In suits by non-residents, security for costs required before issue of summons.
2397. On removal of plaintiff, security required.
2398. Corporations to give security before summons.
2399. On judgment for defendant, execution against security on motion.
2400. If such suits commenced without security, clerk and plaintiff's attorney both liable.

§ 2396. All actions commenced by or for the use of a non-resident of this state, must be dismissed, on motion, by the court, unless security for the costs be endorsed on the complaint, or lodged with the clerk previous to the issue of the summons; and the costs which have accrued must be taxed against the attorney directing the summons to issue.

In suits by non-residents security for costs to be given on issue of summons or proceedings dismissed. Costs accrued taxed to attorney.

§ 2397. If suit be commenced by or for the use of a resident who afterwards removes from the state, the defendant, by motion to the court in term time, or by notice to the plaintiff, his agent, or attorney, in vacation, may require security for the costs, and if such security be not given, on or before the next term of the court, the suit must be dismissed.

If plaintiff removes, security for costs required or suit dismissed on motion.

§ 2398. Corporations before commencing suits, must give security for the costs, which must be lodged with the clerk,

Corporations must give se-

Continued XXIX Ala. 7/-

curity for costs.

and on failure to do so, the suit, on motion of the defendant, must be dismissed.

On judgment for defendant on motion execution issues against security for costs.

§ 2399. If judgment be rendered for the defendant, judgment must, on motion, be rendered against the security, for the costs, as well as against the plaintiff.

On such suits without security, clerk and attorney are both liable to defendant for costs

§ 2400. If such suit be commenced without security being given for the costs, the attorney at law directing the issue of the summons, and the clerk issuing it, are liable to the defendant, on motion, for the costs of the suit.

CHAPTER XVI.

AMENDMENTS.

SEC.		SEC.	
2401.	Amendments made by the court in three years, if enough appears of record to amend, by	2404.	Mistakes of names, dates, sums, &c., in any summons, &c., cured by judgment, if correct, in any part of the record.
2402.	Summons, complaint, pleading, &c., not vitiated by want of form.	2405.	When complaint contains a cause of action, judgment not set aside for objection not taken below.
2403.	Amendments of form allowed at any time, and parties added or struck out, &c.		

Amendments of errors, within three years, if enough is found of record to show the error, &c.

§ 2401. The judges of the circuit courts may at any time within three years after the rendition of final judgment, upon the application of either party, amend any clerical error, mistake in the calculation of interest, or other mistake of the clerk, where there is sufficient matter apparent on the record or entries of the court to amend by. No cause can be reversed for such error or defect by the supreme court, unless the court of original jurisdiction refuses to make the amendment.

Summons, complaint, pleading, &c., not vitiated by want of form.

§ 2402. No summons, complaint, plea, return, process, judgment, or other proceeding, can be arrested, quashed or reversed, for any defect or want of form in any of the courts of this state; but the courts must proceed and give judgment according to the right of the cause and matter in law, without regard to any defect or want of form in the summons, complaint, or other pleading.

Amendments permitted at any time in matters of form.

§ 2403. The courts respectively must, whilst the cause is in progress, amend all and every such imperfection and defect of form on motion of the party, without costs and without delay, unless injustice will thereby be done to the opposite party; and must permit the amendment of the complaint by striking out or adding new parties plaintiff, or by striking out or adding new parties defendant, upon such terms and conditions as the justice of the case may require.

Parties struck out or added on motion.

Mistakes of names, sums, dates, &c., in

§ 2404. Any mistake in the christian or surname of either party, sum of money, quantity of merchandise, day, month

or year, in the summons, complaint or other pleading (the same being right in any part of the record or proceedings,) must, after judgment, be considered as having been amended whilst the cause was in progress.

any summons, &c., if correct in any part of the record cured by judgment.

§ 2405. No judgment can be arrested, annulled, or set aside for any matter not previously objected to, if the complaint contain a substantial cause of action.

Judgment not set aside for cause not previously shown, if complaint contain a cause of action.

CHAPTER XVII.

FOR THE CORRECTION OF ERRORS AFTER JUDGMENT, PREVENTION OF ABUSE OF PROCESS, AND FOR REHEARINGS IN CERTAIN CASES.

SEC.
2406. Power of circuit court after judgment to correct errors and prevent abuse of process.
2407. Receipt found after trial, entitles party to new trial within two years.
2408. Rehearing applied for in four months, if defence was prevented by fraud, &c.
2409. Applied for by petition to circuit judge, contents of petition.
2410. Supersedeas ordered by the judge.
2411. Bond given before issue of the supersedeas.
2412. On denial of petition on oath, supersedeas dismissed; tried at first term.
2413. Refunding bond required before execution issues.
2414. Damages on final hearing.
2415. Bonds taken under this chapter have the force of judgments.
2416. Court may also decide in term time on the validity of an execution.
2417. Of motions of fact tried by a jury.

§ 2406. The circuit court has the power, after final judgment:

Powers of circuit court after judgment to correct errors.

1. To correct any error in fact in the judgment or process, apparent upon the whole record.

2. To secure parties or privies in their rights, against any oppression or abuse of execution, or upon any release, discharge, or payment after judgment.

To prevent abuse of process, &c.

§ 2407. Where a party had a release or discharge in writing of any claim upon which judgment has been rendered against him, which was lost or mislaid at the trial, and which such party was unable to prove by secondary evidence, but has since been found, the circuit court may cause the action to be retried at any time after the discovery of the release or discharge, within two years after judgment.

Receipt found after trial entitles party to a new trial within two years.

§ 2408. Where a party has been prevented from making his defence by surprise, accident, mistake or fraud, without fault on his part, he may in like manner apply for a rehearing, at any time within four months from the rendition of the judgment.

Rehearing applied for in four months if defence was prevented by surprise, &c.

§ 2409. In the cases specified in the two preceding sections, the proceeding is by petition to a judge of the circuit court, stating the matter complained of, with a prayer for the appropriate relief. The facts stated in the petition must be sworn

Rehearing applied for by a petition to a circuit judge.

Contents of petition.

to, unless they appear from a transcript of the record, submitted with the petition.

Supersedeas ordered by the judge.

§ 2410. The judge to whom the application is made must, if satisfied that the applicant is entitled to the relief sought, make the necessary order for a supersedeas to issue, or in restraint of the issue or collection of the execution.

Applicant to give bond before issue of the supersedeas.

§ 2411. The supersedeas must not issue, or the execution be suspended, unless the applicant, or some one for him, give bond in double the amount of the judgment or execution, or in double the amount superseded or restrained, payable to the plaintiff in the judgment or his personal representatives, with sufficient sureties, to be approved by the clerk and conditioned to pay such judgment or execution with interest, and all damages and costs awarded on the trial of the proceeding against him.

Petition tried at the first term.

§ 2412. The facts alleged in the petition must be tried, or the cause reheard at the first term after the granting of the order, unless for cause the same is continued. When the cause is not tried or reheard at such first term, the court may, on the denial on oath by the adverse party of the facts alleged in the petition, make an interlocutory order dismissing the supersedeas or dissolving the restraining order.

On denial of the petition on oath supersedeas dismissed.

Refunding bond required before execution issues.

§ 2413. In the case provided for by the preceding section, no execution can issue unless such party, his agent or attorney, execute a refunding bond in double the amount of the judgment or execution, payable to the adverse party, with sufficient security, to be approved by the clerk, and conditioned that if the final determination of the cause is against him, he will refund the amount collected and interest.

Damages when petition is finally denied.

§ 2414. If, on the final hearing of the cause, it is decided against the complainant, and it appears that the application was not founded on a just or meritorious cause, the court may award damages not exceeding ten per cent. on the amount superseded or restrained.

Bonds taken under this chapter have the force of judgments.

§ 2415. The bonds given under this chapter have the force and effect of judgments, and executions may issue against any or all the obligors, either for the amount superseded or restrained, damages and costs, or the amount collected of the petitioner after the execution of the refunding bond, and interest on such amount.

Court may decide in term time the validity of an execution.

§ 2416. The provisions of this chapter must not be construed to prevent the circuit court from deciding, on an application made in term time, on the validity of any writ of execution.

Questions of fact tried by a jury.

§ 2417. The court may direct the trial of all questions of fact by a jury, upon an issue made up under its direction.

CHAPTER XVIII.

OF THE REVIVAL OF JUDGMENT.

SEC.
2418. If execution issue in a year, others may issue for ten.
2419. Scire facias and other proceedings when execution did not issue within a year, or where none has issued for ten years.
2420. Existing judgments excepted.
2421. Scire facias barred in twenty years.

If execution is issued in a year others may issue for ten years afterwards.

§ 2418. When execution has been issued on a judgment within a year after its rendition, and has not been returned satisfied, another execution may be issued at any time within ten years after the test of the last, without a revival of the judgment.

Execution not to issue without scire facias if one has been issued within a year.

§ 2419. No execution can issue on a judgment on which execution has not been sued out within one year after the rendition, until the judgment is revived by scire facias, calling on the defendant to show cause why the plaintiff should not have execution of his judgment. But if ten years have elapsed from the rendition of the judgment, witnout the issue of the execution, or if ten years have elapsed since the date of the last execution issued, the judgment must be presumed to be satisfied, and the burthen of proving that it is not satisfied is cast on the plaintiff.

When ten years have elapsed without execution plaintiff must show that the judgment is not satisfied.

Existing judgments excepted.

§ 2420. The provisions of the above section do not apply to existing judgments.

Scire facias barred in twenty years

§ 2421. No scire facias shall issue to revive a judgment, after the lapse of twenty years from its rendition.

CHAPTER XIX.

OF EXECUTIONS AND FORTHCOMING BONDS.

ARTICLE 1. Form of, by whom and how issued.
" 2. Of the levy, sale and return.
" 3. Of the property subject to execution.
" 4. Of the lien of executions.
" 5. Property exempt from execution.
" 6. Forthcoming bonds and execution thereon.

ARTICLE I.

Form of, by whom and when issued.

SEC.
2422. Forms of executions to enforce judgments, either for debt, damages, &c., or for recovery of specific property.
2423. To issue as soon as practicable after judgment of the court.
2424. Time in which they must be issued.
2425. Bill of costs to be indorsed on the execution.
2426. May issue before judgment on affidavit, but new trial not waived.

SEC.
2427. To issue immediately after judgment on affidavit, and ca. sa., if required.
2428. Plaintiff may take out more than one writ on paying costs.
2429. When directed to and served by coroner, &c.
2430. Payment on the judgment to be indorsed on an alias execution.
2431. If defendant insolvent, execution against the plaintiff for his own cost.
2432. Females exempt from ca. sa.
2433. Ca. sa. issued only on affidavit, discharge from arrest, how obtained.
2434. Person discharged by privilege, to surrender after it ceases.
2435. On arrest, property received in discharge of the person.

Executions on judgments

§ 2422. For the satisfaction of judgments, the party in whose favor the judgment is rendered, whether for debt, damages or costs, may within a year thereafter, have either a writ of fieri facias against the lands and goods of the party against whom the judgment is rendered, or a capias ad satisfaciendum against the body. When the judgment is for specific property or the alternate value, or for the possession of lands, appropriate writs of execution, as hereafter described, may issue for the satisfaction thereof, which must conform substantially to the forms hereby prescribed.

[*Fieri Facias.*]

Form of fieri facias.

The State of Alabama, }
County. } To any sheriff of the state. You are hereby commanded that of the goods and chattels, lands and tenements of A. B., you cause to be made the sum of —— dollars, which C. D. recovered of him on the —— day of —— 18 ——, by the judgment of our circuit court, held for the county of ——, besides costs of suit; and have the same to render to the said C. D., and make return of this writ, and the execution thereof according to law.

Witness my hand, this —— day of ——

E. F., Clerk.

[*Capias ad satisfaciendum.*]

Form of ca. sa.

The State of Alabama, }
County. } To any sheriff of the state. You are hereby commanded to take the body of A. B., if to be found in your county, and him safely keep so that you have his body at the next term of our circuit court to be held for the county of ——, to satisfy C. D. the sum of —— dollars, which the said C. D., by the judgment of said court, recovered of him, on the —— day of ——, besides —— dollars costs of suit; and make return of this writ and the execution thereof according to law. Witness my hand, &c.

E. F., Clerk.

[*Habere facias possessionem and fieri facias.*]

Writ of possession and fieri facias.

The State of Alabama, }
County. } To any sheriff of the state. You are hereby commanded to deliver to A. B. possession of the lands and tenements which the said A. B. recovered of C. D. by the judgment of our circuit court held for the county of ——, on the —— dayof ——, viz: (describe the land recovered.) You are further directed, of the goods and chattels, lands and tenements of the said C. D., you cause to

be made the sum of —— dollars damages, adjudged to the said A. B., and also the further sum of —— dollars costs of suit; and make return of this writ and the execution thereof, according to law. Witness my hand, &c. E. F., Clerk.

[*For the delivery of specific property, and damages for the detention.*]

The State of Alabama, }
County. } To any sheriff of the state.

Writ for seizure and delivery of specific property under judgment in detinue.

You are hereby commanded to seize and deliver to A. B., the following slaves, (or other personal property as the case may be,) which the said A. B., on the —— day of ——, by judgment of our circuit court, held for the county of ——, recovered of C. D., if the same can be had, if not, you are hereby directed that of the goods and chattels, lands and tenements, of the said C. D., you cause to be made the sum of —— dollars, the alternate value of the said slaves, viz: (here set out the assessed value of each slave or other personal property.) Also the further sum of —— dollars for the detention of the said slaves by the said C. D., besides —— dollars, costs of suit; and make return of this writ and the execution thereof according to law.

Witness my hand, &c. E. F., Clerk.

Executions to issue as soon after court adjourns as practicable.

§ 2423. The clerk must issue executions on all judgments in favor of the successful party, as soon after the adjournment of the court as practicable, within the time prescribed by this code, unless otherwise directed. The writ must be signed by the clerk, and tested on the day it is issued.

Time in which executions must be issued.

§ 2424. When the court continues in session but one week, the clerk must issue executions within five days thereafter; when it continues more than one and less than two weeks, within ten days thereafter; when it continues in session more than two, and less than three weeks, within fifteen days thereafter; and when it continues more than three weeks, within twenty days from the adjournment.

Bill of costs to be indorsed.

§ 2425. At the foot or on some part of the execution, the clerk must state the several items composing the bill of costs, in intelligible words and figures.

Execution issued before judgment on affidavit.

§ 2426. Upon the rendition of judgment, execution may be issued by leave of the court, before the adjournment thereof, the plaintiff, his agent or attorney showing sufficient cause therefor, by affidavit; but the defendant is not prevented thereby from moving for a new trial or in arrest of judgment, or deprived of any right he would otherwise have had.

New trial, &c, not waived thereby.

On affidavit after judgment, execution to issue immediately, and ca. sa. if required.

§ 2427. After the adjournment of the court and before the expiration of the time limited by section 2424, the clerk must, on affidavit being made and filed in his office, that the defendant is about fraudulently to dispose of, or remove his property, and that thereby the plaintiff will probably lose his debt, issue execution against the property of the defendant. And must also, if required, and the affidavit prescribed by section 2175 is made, issue an execution against the body of the defendant.

More than one writ of execution may issue at plaintiff's cost.

§ 2428. More than one writ of execution may be issued, at the costs of the plaintiff, though the first be not returned, and when a capias ad satisfaciendum is returned not found, a fieri facias may issue. So when a fieri facias is returned not satisfied, or satisfied only in part, an alias fieri facias, or capias ad satisfaciendum may be issued.

Executions; when directed to coroner

§ 2429. In the cases provided for by Chapter three, Title ten, Part one., the execution must be directed to, and executed by the coroner, or special coroner, as the case may be.

Credits on the judgment to be indorsed on alias execution.

§ 2430. When a judgment has been satisfied in part, and an alias execution issued, the clerk must indorse thereon the amount which had been previously made, with the time of its payment or collection by the sheriff.

If defendant insolvent execution against the plaintiff for his costs.

§ 2431. When execution against the defendant is returned "no property found," execution may issue against the plaintiff, in the name of the clerk of the court, for all costs created by him in obtaining his judgment.

Females exempt from ca. sa.

§ 2432. The writ of capias ad satisfaciendum must not issue to take the body of a female.

Ca. sa. only issued on affidavit, &c.

§ 2433. Before a writ of capias ad satisfaciendum is issued in any case, the party applying for it must make and file with the clerk the affidavit required by section 2175, providing for bail in civil cases. When an arrest is made under the writ, the defendant may discharge himself from custody in the mode pointed out for persons arrested on a bail writ, and the plaintiff, in all respects, has the benefit of the provisions of the law for the discharge of bail, for the collection of his demand.

How discharged from arrest.

Person discharged by privilege to surrender after it ceases, or liable as for an escape.

§ 2434. Any person taken in execution, who is delivered out of custody by his privilege as a member of the legislature, as soon as his privilege ceases, must return himself a prisoner in execution, or be liable as for an escape.

On arrests under ca. sa. property may be delivered in discharge of the person.

§ 2435. When a capias ad satisfaciendum is issued, the defendant may tender to the sheriff property in discharge of the judgment, which he must receive in lieu of the body of the defendant, endorsing the receipt thereof on the writ, and make sale thereof as in case of a levy by fieri facias; if by the sale, a sufficient sum is not raised to satisfy the judgment and costs, an alias fieri facias, or capias satisfaciendum may issue.

ARTICLE II.

Of the levy, sale and return.

SEC.
2436. Time of receipt of execution to be indorsed, and order of receipt if more than one.
2437. To be executed with diligence, returned, &c.
2438. When returned.
SEC.
2439. Reason for not executing, stated in the return.
2440. Sheriffs may make returns to other counties by mail; money not to be sent by mail.
2441. Fi. fa. of less than one hundred

SEC.
dollars, not to be levied on slaves if other property can be found.
2442. Custody of slaves or cattle levied on.
2443. Description of property levied on to be indorsed on the execution, and notice given to the owner of land levied on.
2444. Indemnifying bond, when required.
2445. Lien of execution lost by creditor, refusing to indemnify.
2446. Time and place of selling property levied on.
2447. Notice of sale, how and when given.
SEC.
2448. Property of principal first levied on.
2449. Amount collected to be indorsed, and receipt given to defendant.
2450. Other property substituted for that levied on.
2451. Notice of collection of the money given to the plaintiff.
2452. Excess of sales paid defendant, or money collected before notice of injunction.
2453. When land or slaves are sold, the names, description, and price to be indorsed.
2454. Order of sale of goods on hand after return of execution; form of such order.

Time of receipt of execution to be indorsed, and if more than one on the same day the order of the receipt, &c.

§ 2436. The sheriff, or other officer receiving an execution, must indorse thereon the day, month and year of its receipt. When more than one execution against the same defendant comes to his hands on the same day, if not received at the same time, he must indorse the order in which they are received.

To be executed with diligence and returned, &c.

§ 2437. He must execute the writ with diligence, and if practicable, perform the mandate thereof, and make return of his acts to the clerk, three days before the first day of the return term of the writ.

Return term of executions

§ 2438. The return term of the writ is the term next after its date, unless issued less than fifteen days before court; in which case it is the term next thereafter.

Reason for not executing stated in the return.

§ 2439. If the writ be not executed, or only executed in part, the reason why it is not executed, or only executed in part, must be stated in the return.

Sheriff of another county may make returns by mail, &c.

§ 2440. The return of an execution or other process, by a sheriff of a county other than that from which the process issued, may be made through the public mail, and the certificate of the post master, that it was placed in his office in time by the usual course of the mail, to reach the court house of the county where the return has to be made, by the return day of the writ, shall be presumptive evidence for the sheriff of the fact. The sheriff is not authorized to send money by the mail without the consent of the plaintiff in execution.

Not to send money by mail.

No execution for less than one hundred dollars levied on slaves.

Exception.

§ 2441. No fieri facias, for an amount under one hundred dollars, must be levied on slaves, unless there is not a sufficiency of other property of the defendant known to the sheriff, within the county of his residence, out of which it can be satisfied.

Sheriff to provide slaves levied on with food, &c.; also to feed cattle levied on.

§ 2442. When slaves or live stock are levied on, and remain in the hands of the officer for sale, it is his duty to provide them with sustenance. He must not, unless required so to do by the plaintiff, or defendant, imprison the slaves; but it is his duty to hire them out, or employ the slaves, horses, and other stock, if practicable, for their support; and if unable to do so, must be allowed a reasonable compensa-

tion by the court for their support, which he may retain from the proceeds of the sale.

Description of property to be indorsed on the execution.

§ 2443. Where a levy is made of real or personal property, a full description thereof, with the date of the levy, must be indorsed upon, or appended to the execution. Where the levy is of real estate, personal notice thereof must be given to the defendant, or a notice thereof in writing left at his residence, if resident in the county; if not, then by putting up a written notice at the court house door; and the manner of giving notice must be stated in the return.

Notice of levy on land to be given the owner.

In cases of doubt indemnifying bond required.

2444. When a reasonable doubt exists, whether property levied on belongs to the defendant, or whether property alleged to be his, is subject to levy and sale, the sheriff may require of the plaintiff, his agent or attorney, a bond of indemnity; and if it be not given within ten days thereafter, he may restore the property to the defendant, if levied upon, or decline to levy if one has not been made; but may be required to levy and sell at any time thereafter, on being indemnified.

If party having first lien refuses to indemnify, others may do so for their benefit.

§ 2445. If a party having the prior lien, refuse to give such indemnity on demand of the sheriff, the person having the next lien in order, may give such bond and have the property sold for his benefit.

Time and place of selling property levied on.

§ 2446. Lands, slaves, horses, mules, jacks and jennets, when levied on by execution from courts of record, must be sold on the first Monday in the month, at the court house of the county; other property may be sold on any day except Sunday, either at the court house, the residence of the defendant, the place where levied, or the neighborhood thereof, as may be most expedient. The sale may be continued from day to day, if rendered necessary by the inclemency of the weather, or from inability to conclude the sale in one day.

Notice of the sale of property levied on; when and how given.

§ 2447. Ten days' notice of the sale of personal property, other than slaves, must be given, by advertisement, at the court house door, and also by advertisement in a newspaper, if one is published in the county. In like manner, twenty days' notice must be given of the sale of slaves, and thirty days' notice of the sale of real property.

Property of principal first levied on.

§ 2448. When execution issues against two or more persons, any of whom were sureties on the contract before judgment, the sheriff must levy on the property of the principal first, if any can be found in the county, on the application of such surety; and may require of the surety affidavit of the fact of suretyship, which he must file with the execution.

Suretyship shown by affidavit.

Indorsement of amount collected on execution.

§ 2449. When money is collected on an execution, the officer collecting it must indorse thereon, or append thereto, the amount collected, specifying the judgment, interest thereon, and costs, with his own commissions, and sign his name thereto. He must also, if required, receipt in like manner to the defendant.

Receipt to the defendant.

§ 2450. The debtor has the right, on the day of sale, to substitute other property of equal value, not covered by any

lien, in lieu of that levied upon; which fact, and a description of the property substituted, must be indorsed on or appended to the execution, and the substituted property be sold in lieu of that levied upon. Other property substituted for that levied on.

§ 2451. When the money, or any part thereof, has been made on an execution, the officer must give the plaintiff, his agent, or attorney, personal notice thereof, within ten days thereafter, if resident in the county. If not resident in the county, and he knows the residence of them, or either of them, such notice may be sent by mail through the post office. Notice of collection to be given the plaintiff or his attorney.

§ 2452. When at an execution sale, the amount of the sale exceeds the judgment, interest, and costs, the excess must be paid to the debtor or his legal representatives. Or when money is paid, or collected on an execution, the whole, or any part of which is enjoined in chancery, the same must, on demand, be refunded to the debtor or his legal representatives, if it has not been paid over to the plaintiff, his agent or attorney, without notice of the injunction. Excess of sales paid to defendant. On collection before notice of injunction, money paid to defendant.

§ 2453. When land or slaves are sold under execution, the names of the slaves, and the price for which they were sold, with a description of the land and the price obtained for it, must be indorsed on or appended to the writ by the officer making such sale. Names of slaves, and description of land, sold under execution indorsed on it, with the price.

§ 2454. When goods levied on remain in the hands of the officer unsold, it is his duty to make return of the fact, and thereupon the clerk must issue a writ for the sale thereof, in substance as follows: Writ for sale of goods remaining in sheriff's hands unsold

The State of Alabama,)
County.) To the sheriff of said county: Form of such writ.

You are hereby commanded to sell those goods and chattels of A. B., which you have taken pursuant to our command, and which according to your return remain in your hands unsold, to satisfy C. D. the sum of —— dollars recovered by him of the said A. B., by the judgment of our circuit court held for the county of ——, on the —— day of ——, and —— dollars costs of suit, and make return of this writ and the execution thereof according to law. Witness my hand, &c.

E. F., Clerk.

ARTICLE III.

Of the property subject to execution.

Sec. 2455. Titles to real property which can be sold under execution; character of personal property, and interests in mortgaged property.

§ 2455. Executions may be levied:

1. On real property to which the defendant has a legal title or a perfect equity, having paid the purchase money, or in which he has a vested legal interest, in possession, reversion or remainder, whether he has the entire estate or is entitled to it in common with others. Real property subject to levy and sale under execution.

Personal property.

2. On personal property of the defendant (except things in action) whether he has the absolute title thereto, or the right only to the possession thereof for his own life, the life of another, or any shorter period. But this does not apply to a possession acquired by a bona fide hiring of a slave or other chattels.

Mortgagad property.

3. On an equity of redemption in either land or personal property. When any interest less than the absolute title is sold, the purchaser is subrogated to all the rights of the defendant and subject to all his disabilities.

ARTICLE IV.

The lien of executions.

Sec.		Sec.	
2456.	Executions only have a lien on real or personal property in the county, from time of delivery to sheriff, and lien continued by issuing other executions.	2457.	Order of priority of liens between different creditors.
		2458.	Lien destroyed by supersedeas or injunction.
		2459.	Execution, having a lien levied, after death of the defendant.

Fieri facias lien on all property in the county.

§ 2456. A writ of fieri facias is a lien only within the county in which it is received by the officer, on the lands and personal property of the defendant, subject to levy and sale, from the time only that the writ is received by the sheriff; which lien continues as long as the writ is regularly issued and delivered to the sheriff without the lapse of an entire term.

Lien, how continued.

Order of liens of different judgment and execution debtors.

§ 2457. The liens of executions as between different judgment creditors, and between judgment creditors and purchasers from the defendant for valuable consideration, are hereby declared to be: that if an entire term elapse between the return of an execution and the suing out of an alias, the lien created by the delivery of the first execution to the sheriff is lost; but if an alias be sued out before the lapse of an entire term, and delivered to the sheriff before the sale of property under a junior execution, the lien created by the delivery of the first execution must be preferred.

Lien destroyed by execution of supersedeas or injunction bond, or bond for an appeal by which judgment is superseded.

§ 2458. The execution of a bond for an appeal by which the judgment is suspended, or the execution of a bond by the defendant, upon the proper officer, granting an injunction, supersedeas, or restraining order, destroys the lien created by the delivery of a fieri facias to the sheriff.

Execution levied after defendant's death.

§ 2459. A writ of fieri facias issued and received by the sheriff during the life of the defendant, may be levied after his decease, or an alias issued and levied if there has not been the lapse of an entire term, so as to destroy the lien originally created.

ARTICLE V.

Property exempt from execution.

SEC.
2460. Property on leased land, unless a year's rent be tendered.
2461. Growing crop not exempt from levy, but exempt from sale till mature.
2462. List of property exempt for the use of every family.
2463. Value of homestead, how fixed.
2464. After claim of exemption the homestead cannot be sold without subjecting it to the lien.
2465. Sheriff not liable for trespass, unless affidavit of exemption be made.
2466. Property exempt to be returned on claim.

Property on leased premises, unless a year's rent be tendered.

§ 2460. No execution must be levied on goods or chattels in possession of and upon the premises of a tenant held by lease for one or more years, until the rent due or to fall due during the current year is paid or tendered to the landlord or his agent or attorney, and the sheriff executing the writ must levy and sell, as well for the repayment of the rent so tendered as for the satisfaction of the execution.

Levy may be made on growing crops, but no sale till mature, &c.

§ 2461. A levy may be made upon a growing crop when there is no other property of the defendant known to the sheriff, but no sale must be made thereof until the crop is gathered. It is the duty of the sheriff at the request of the plaintiff, his agent or attorney, to employ hands if practicable and gather the crop, unless the defendant is willing and offers to do so. When the crop is sold the proceeds must be applied, first to repay the cost of gathering it, and afterward to the satisfaction of the execution.

Property exempt for the use of every family.

§ 2462. The following property may be permanently retained for the use of every family in the state, exempt from levy and sale by any legal process:

1. Household and kitchen furniture of the value of one hundred and fifty dollars, to be selected by the head of the family, the value thereof to be assessed by three disinterested persons, to be selected by the sheriff.

Same.

2. All books not kept for sale, all family portraits, one gun, one loom, two spinning wheels, one man's and one woman's saddle.

3. Three cows and calves, twenty head of sheep, twenty head of hogs, five hundred pounds of meat, one thousand pounds of fodder, twenty-five bushels of wheat, all the meal at any time on hand not kept for sale, one work horse or mule, or one pair of oxen, one horse or ox cart, all tools or implements of any mechanical trade not kept for sale, not to exceed two hundred dollars in value, two ploughs and plough gear, and two hoes.

Homestead.

4. Such real property as may be selected by the head of the family, to include the homestead, not to exceed forty acres, and in value not to exceed five hundred dollars.

Value of homestead; how settled.

§ 2463. The value of the real property must be ascertained by three disinterested freeholders, to be summoned by the sheriff for that purpose, who must be sworn to make the

valuation fairly, and if necessary must set off the land by metes and bounds, who are entitled to two dollars a day, to be paid by the defendant in execution.

Such property cannot be sold by the head of the family.

§ 2464. Neither the head of the family nor any member thereof has the power to sell or dispose of the property thus exempt from sale or levy; and if sold and taken possession of by the purchaser, or if abandoned by the family, by the death or dispersion of its members, is liable for the debts existing at the time the exemption was claimed.

Sheriff not liable unless affidavit of exemption be made.

§ 2465. No sheriff or other officer levying on property exempt from execution, is liable for any damages therefor, unless the defendant, or some other person for him, make affidavit that the property about to be levied on is exempt from execution, and exhibit the same to such sheriff or officer.

Property exempt to be returned on claim, &c.

§ 2466. If the affidavit prescribed by the preceding section is made within five days after the levy, such sheriff or other officer must, on such affidavit being delivered to him, and the tender of the costs and expenses for keeping the property levied on, deliver such property on demand to the defendant, and failing so to do is, with his sureties, liable to the defendant for all damages.

ARTICLE VII.

Forthcoming bonds and execution thereon.

Sec.		Sec.	
2467.	Property levied on restored on giving forthcoming bond.	2469.	Certain persons denied the right to give forthcoming bonds.
2468.	On forfeiture of the land the clerk issues execution.	2470.	If the property is destroyed without fault, the value may be tendered.

Property restored if forthcoming bond is given

§ 2467. When slaves or other personal property are levied on by the sheriff, if the defendant execute bond payable to the plaintiff in double the amount of the execution, with sufficient surety, conditioned to deliver the property levied on to the proper officer by twelve o'clock noon of the day and at the place appointed for the sale thereof, the sheriff must restore the property to the defendant.

Clerk issues execution on forfeiture of the bond.

§ 2468. If the property is not delivered according to the condition of the bond, the sheriff must return it forfeited within five days thereafter to the clerk's office out of which the execution issued, indorsing thereon a forfeiture of the bond; and it is then the duty of the clerk without delay to issue execution on the forfeited bond, against all the obligors therein, for the judgment and costs, upon which no security of any kind can be taken, which he must indorse upon the writ.

Forthcoming bonds not received from officers, on

§ 2469. The two preceding sections do not apply to executions issued on judgments against sheriffs, coroners, or other officers of court against whom judgment is obtained for

failing to pay over money collected or paid to them in official capacity; and the clerk must indorse on all such executions, "no security of any kind to be taken." judgments for not paying over money collected.

§ 2470. When property is restored to the defendant on the execution of a forthcoming bond, and the same dies or is destroyed before the day for the delivery thereof, without fault on his part, the obligors in the bond may tender the value to the plaintiff, his agent or attorney, and if such tender is refused, the obligors in such bond may, on petition to the judge of the circuit court, supersede the same. If the property is destroyed without fault the value may be tendered.

CHAPTER XX.

GARNISHMENT ON JUDGMENTS.

SEC.
2471. On affidavit of judgment creditor that there is no visible property to pay his debt, garnishment issues.
2472. Garnishment of stockholders in a corporation on return of execution, "no property."
2473. Proceedings similar to those against garnishees in attachment.

§ 2471. Judgment creditors, their agents or attorneys, may obtain process of garnishment, against any person supposed to be indebted to the defendant, in any cause, where execution could issue on the judgment, by making affidavit, before the clerk of the court in which the judgment was rendered, that such person is supposed to be indebted to, or have effects of the defendant in his possession or under his control, and that he believes process of garnishment against such persons is necessary to obtain satisfaction of such judgment, and thereupon the clerk must issue the process, returnable forthwith if in term time, or to the next term of the court, if in vacation; and such proceedings shall thereon be had as upon garnishments in original attachments. Garnishments issue on affidavit of judgment creditor.

§ 2472. A judgment creditor of an existing corporation, whose execution has been returned, "no property found," his agent, or attorney, upon making affidavit before the clerk, that a certain person supposed to be indebted to the corporation, as stockholder of the corporation, or otherwise, is entitled to process of garnishment, returnable forthwith, if in term time, or to the next term if in vacation, and such proceedings must thereupon be had, as in cases of original attachments. Garnishments to stockholders of corporation on return of no property against it.

§ 2473. The provisions of Articles five and six, Chapter one, Title two, of this part, are applicable to the preceding sections of this chapter. Proceedings against garnishees, &c.

CHAPTER XXI.

OF LIMITATION OF ACTIONS.

ARTICLE 1. Of the time within which suits must be brought.
" 2. General rules.

ARTICLE I.

Of the time within which suits must be brought.

SEC.
2474. Civil suits to be commenced within a certain time, and not afterwards.
2475. Suits which must be commenced within twenty years.
2476. Suits to be commenced within ten years.
SEC.
2477. Within six years.
2478. Within five years.
2479. Within four years.
2480. Within three years.
2481. Within one year.

Statute of limitations.

§ 2474. Civil suits must be commenced after the cause of action has accrued, within the periods prescribed in this chapter, and not afterwards.

Actions to be brought in twenty years

§ 2475. Within twenty years:

1. Actions at the suit of the state of Alabama against a citizen thereof, for the recovery of real or personal property.

2. Actions upon a judgment or decree of any court of the state of Alabama, of the United States, or of any state or territory of the United States.

In ten years.

2476. Within ten years:

1. Actions founded upon any contract, or writing under seal.

2. Actions for the recovery of lands, tenements, or hereditaments, or the possession thereof.

3. Motions, and other actions, against sheriffs, coroners, constables, and other public officers, for nonfeasance, misfeasance, or malfeasance in office.

In six years.

§ 2477. Within six years:

1. Actions for a trespass to real or personal property.

2. Actions for the detention or conversion of personal property.

3. Actions founded on a promise in writing not under seal.

4. Actions for the recovery of money, upon a loan, upon a stated or liquidated account, or for arrears of rent, due upon a parol demise.

5. Actions for the use and occupation of land.

6. Motions, and other actions against the sureties of any sheriff, coroner, constable, or any public officer; or actions against the sureties of executors, administrators, or guardians, for any misfeasance, or malfeasance whatever to their principal; the time to be computed from the act done, or omitted by their principal, which fixes the liability of the surety.

7. Motions, and other actions against attorneys at law, for failing to pay over money of their clients, or for neglect or omission of duty.

8. Any action, founded upon any judgment of a justice of the peace of this state.

9. Any action arising from simple contract, or specialty, not herein specifically enumerated.

§ 2478. Within five years:

Within five years.

1. All actions founded on equities of redemption, where lands have been sold under a decree of the court of chancery, existing in any person, not a party to the proceedings, who claims under the mortgagor, or grantor in the deed of trust.

§ 2479. Within four years:

Within four years.

All actions or motions against any security to any writ of error, appeal, replevin, or forthcoming bond, executed in any cause, in any of the courts of the United States, or in any other state or country except the state of Alabama.

§ 2480. Within three years:

Within three years.

1. Actions to recover money due by open or unliquidated account, the time to be computed from the date of the last item of the account, or from the time when, by contract or usage, the account is due.

§ 2481. Within one year:

Within one year.

1. Actions for assault and battery, false imprisonment, or malicious prosecution.

2. Actions for criminal conversation, for the seduction of a female, or breach of marriage promise.

3. Actions qui tam, or for a penalty given by statute to the party aggrieved, unless the statute imposing it prescribes a different limitation.

4. Actions of libel, or slander.

5. Actions against steam boats, and other water-craft, commenced by attachment.

6. Civil actions, for any injury to the person, or rights of another, not arising from contract, and not herein specifically enumerated.

ARTICLE II.

General rules.

SEC.

2482. Entry presumed when the right exists.

2483. Right of, not tolled by descent cast.

2484. Period of absence from the state deducted from the time since action accrued.

2485. If suit is brought, and judgment rendered, another suit may be brought within a year.

2486. Three years allowed infants, &c., to bring suits after removal of disability. Restriction.

2487. If the laws of another state bar a suit, a cause of action arising there is also barred here.

2488. The statute does not embrace accounts between merchants.

2489. Last item of an account is the date from which the statute runs.

2490. Bar of the statute only removed by partial payment or promise in writing.

2491. When a demand is necessary, time computed from the act done, and not the demand.

2492. In actions for fraud, time com-

SEC.
computed from the discovery.
2493. Suing out a summons is a commencement of suit.
2494. Six months of time, between death and grant of letters not computed.
2495. Nor the six months in which the executors and administrators are exempt from suit.
2196. Time of accrual of action against deputy or agent.
SEC.
2497. Time of injunction not computed.
2498. If the act begins to run it is not suspended.
2499. All disabilities to cease before the act runs.
2500. Nor suspends the act as to citizens of an enemy's state.
2501. No limitation as to notes put in circulation as money.
2502. Applies to causes of action now subsisting. Exceptions.

Entry presumed when the right exists.

§ 2482. When a right of entry on lands accrues, the entry must be considered as having been made, and the cause of action as having then accrued.

Right of entry not tolled by a descent cast.

§ 2483. The right of entry is not tolled by a descent cast.

Time of absence from the state deducted from the time since action accrued.

§ 2484. When any person is absent from the state, during the period within which a suit might have been brought against him, such period or periods of time must not be computed as a portion of the time necessary to create a bar under this chapter.

If suit is brought and judgment recovered and then reversed, suit may again be brought within a year

§ 2485. If suit be brought in any of the said actions, before the time limited has expired, and judgment be rendered for the plaintiff, and such judgment be arrested, or reversed on appeal, the plaintiff, or his legal representatives, may commence suit again within one year from the reversal or arrest of such judgment, though the period limited may in the mean time have expired; and in like manner, if more than one judgment be reversed, or arrested, an action may be recommenced within one year.

Three years after removal of disability allowed infants, &c., to bring suits.

§ 2486. If any one entitled to bring any of the actions enumerated in this chapter, or to make an entry on land, or defence founded on the title to real property, be at the time such right accrues, within the age of twenty-one years, a married woman, or insane, or imprisoned on a criminal charge, for any term less than for life, he or she has three years after the termination of such disability to bring suit, make entry or defence. But no disability will extend the period of limitation, so as to allow such action to be commenced, entry or defence made, after the lapse of twenty years from the time of the cause of action, or right accrued, nor must this exception extend to a married woman, in respect to her separate estate.

Time not to be extended beyond twenty years.

If the laws of another state bar a suit for a cause of action accruing there, it is also barred here.

§ 2487. When the statute of limitations of another state or foreign country has created a bar to an action upon a contract or act done in such state or country, whilst the party sought to be charged thereby was a resident of such state or country, the bar thus created is effectual in this state, against any suit brought thereon, in the same manner it would have been in the state or country where the act was done or contract made.

Not to extend to current accounts between merchants.

§ 2488. The limitations herein provided, do not apply to such actions as concern the trade of merchandise between merchants and merchants, their agents and factors, while the accounts between them are current.

Last item of an account is the date from which time is reckoned.

§ 2489. When there are mutual accounts between persons who are not merchants, the time must be computed from the date of the last item, unless the account be liquidated, and a balance struck.

Partial payment or promise in writing and signed, is necessary to avoid the bar

§ 2490. No act, promise or acknowledgment is sufficient to remove the bar to a suit created by the provisions of this chapter, or is evidence of a new or continuing contract, except a partial payment made upon the contract, by the party sought to be charged before the bar is complete, or an unconditional promise in writing, signed by the party to be charged thereby.

When a right is to be matured by demand, before suit brought, time is computed from the act and not from the demand.

§ 2491. When a right exists, but a demand is necessary to entitle the party to an action against any officer, agent or attorney, the limitation commences from the commission or omission of the act, giving the right of action, and not from the date of the demand.

In actions on account of fraud the time is computed from discovery.

§ 2492. In actions seeking relief on the ground of fraud, where the statute has created a bar, the cause of action must not be considered as having accrued until the discovery by the aggrieved party of the facts constituting the fraud, after which he must have one year within which to prosecute his suit.

Summons is a commencement of suit.

§ 2493. The suing out of a summons, is the commencement of a suit, whether it be executed or not, if the suit be continued by an alias, or recommenced at the next term of the court.

Time between death and grant of letters of administration not computed as to six months.

§ 2494. The time between the death of a person and the grant of letters testamentary or of administration, not exceeding six months, is not to be taken as any part of the time limited for the commencement of actions by or against his executors or administrators.

Nor the six months during which executors, &c., are exempt from suit.

§ 2495. The six months which an executor or administrator is exempt from suit, after the grant of letters, is not to be taken as any part of the time limited for the commencement of action against him.

Time of accrual of action for liability of a deputy or agent.

§ 2496. When an injury arises from the act or omission of a deputy or agent, the time for the limitation of an action by the principal against such deputy or agent, does not commence to run until the liability of the principal for the act or omission of such deputy or agent is ascertained, by suit of the aggrieved party against the principal.

Time of injunction not computed.

§ 2497. When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or statute prohibition, is not computed as part of the time.

If the act once begins to run it is not suspended.

§ 2498. A disability which did not exist when the cause of action accrued, does not suspend the operation of the limitation, unless the contrary is expressly provided.

All disabilities to cease before time begins.

§ 2499. When two or more disabilities coexist, at the time the cause of action accrued, the limitation does not attach until all are removed.

§ 2500. When the United States is at war with a foreign

War suspends the act as to citizens of hostile nation.

country, and either party to a contract is a subject or citizen thereof, the time of the continuance of the war is not computed as part of the time limited for the commencement of the suit.

No limitation to actions on notes put in circulation as money.

§ 2501. The provisions of this chapter do not apply to actions to enforce payment of bills, notes or other evidences of debt, issued or put in circulation as money.

Causes of action; how subsisting to which this chapter applies.

§ 2502. The provisions of this chapter apply to all subsisting causes of action, except such as suits have been commenced upon, and all now pending, and those upon which suits may be commenced, within one year from the time this code goes into operation.

Title 2.

SPECIAL PROCEEDINGS IN CERTAIN CASES.

CHAP. 1. Attachments at law.
" 2. Trial of right of property.
" 3. Summary judgments.
" 4. Proceedings by sureties.
" 5. To vacate charters of corporations, and prevent usurpation in office.
" 6. Mechanics' lien.
" 7. Partition of lands.
" 8. Proceedings in admiralty.
" 9, Arbitration.
" 10. To appoint and remove trustees.
" 11. Prison bounds, and insolvent debtors.
" 12. Inquisitions of lunacy.

CHAPTER I.

ATTACHMENTS AT LAW.

ARTICLE 1. Of the issue of attachments.
" 2. In what manner and on what property executed.
" 3. Of attachments for rent.
" 4. Of the replevy and claim of property.
" 5. Proceedings against garnishees.
" 6. Collateral issues.
" 7. Ancillary attachments.
" 8. Judicial attachments.
" 9. Of the pleadings in attachment.
" 10. Attachments against steam boats.

ARTICLE I.

Of the issue of attachments.

SEC.
2503. For what debts and damages issued.
2504. Cases in which attachments issue.
2505. By what officers issued for any certain money demand.
SEC.
2506. Oath as to the debt and cause for attachment to be made.
2507. Bond and security also required.
2508. Judge or chancellor to require sworn statements of facts on

application for attachment for damages.
2509. Attachment by a non-resident, against another.
2510. Notice to a non-resident defendant in attachment.
2511. State bank has attachment without bond.
2412. Corporations may sue out attachments.
2513. Against foreign corporations.
2514. Form of attachment; no objections taken for want of form.
2515. Bond and affidavit returnable with the attachment.

§. 2503. Attachments may issue:

Attachments issue to collect any debt or damages.

1. To enforce the collection of a debt, whether it be due or not, at the time the attachment is taken out.

2. For any moneyed demand, the amount of which can be certainly ascertained.

3. To recover damages for a breach of contract, when the damages are not certain or liquidated.

4. When the action sounds in damages merely.

§ 2504. And in the following cases:

Cases in which attachments issue.

1. When the defendant resides out of the state.

2. When the defendant absconds.

3. When the defendant secretes himself so that the ordinary process of law cannot be served on him.

4. When the defendant is about to remove out of the state.

5. When the defendant is about to remove his property out of the state, so that the plaintiff will probably lose his debt, or have to sue for it in another state.

6. When the defendant is about fraudulently to dispose of his property.

7. When the defendant has fraudulently disposed of his property.

8. When the defendant has moneys, property or effects, liable to satisfy his debts, which he fraudulently withholds.

By whom issued; for any certain money demand.

§ 2505. In the first and second cases mentioned in section 2503, it may be issued by any judge of the circuit court, returnable to any county in the state, or by the clerk of the circuit court, judge of the probate court or any justice of the peace, within their respective counties. In the third and fourth cases by a judge of the circuit court or chancellor only, returnable to any county.

Oath as to amount of debt and ground of attachment required.

§ 2506. The officer, before issuing the attachment in the two first cases mentioned in the last section, must require the plaintiff, his agent or attorney, to make oath of the amount of the debt or demand, and that it is justly due; also, that one of the causes enumerated in section 2504 exists, and that the attachment is not sued out for the purpose of vexing or harassing the defendant; which must also be reduced to writing, and subscribed by the party.

Bond and security also required.

§ 2507. He must further require the plaintiff, his agent or attorney, to execute a bond in double the amount claimed to be due, with sufficient surety, payable to the defendant, with condition that the plaintiff will prosecute the attachment to effect, and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out such attachment.

Judge or chancellor to require a sworn statement of facts in claims of damages.

§ 2508. When an attachment is applied for in the cases provided for in the third and fourth subdivisions of section 2503, the judge or chancellor, before issuing it, must require the plaintiff, his agent or attorney, in addition to the affidavit and bond required in other cases, to make affidavit in writing, of the special facts and circumstances, so as to enable him to determine the amount for which a levy must be made; which sum may, at the discretion of the court, be reduced at the return term of the attachment, on affidavit of the defendant, and the levy released to the amount of such reduction.

Attachment by a non-resident against another.

§ 2509. A non-resident of this state may sue out an attachment against a non-resident for an existing debt, or ascertained liability; but the plaintiff, his agent, or attorney, is required, in addition to the oath necessary in other cases, to swear that according to the best of his knowledge, information and belief, the defendant has not sufficient property within the state of his residence, wherefrom to satisfy the debt; and must also give bond as in other cases, with surety, resident in this state.

Additional oath in such cases.

Notice to a non-resident defendant in attachment.

§ 2510. When an attachment is sued out against a non-resident, the court, at the return term of the writ, must direct the clerk to cause a notice of the attachment, and levy on the defendant's property, to be advertised four successive weeks, in some newspaper, a copy of which must be sent by mail to the defendant, if his residence is known, or can be ascertained, unless he appears and defends.

Commissioner of state bank sue out attachment without bond

§ 2511. The commissioner and trustee of the state bank, his agent or attorney, may sue out an attachment to recover a debt due the bank, in any county of the state, upon making affidavit as required in other cases, without executing bond; and for a wrongful suing out of the attachment, the bank is liable to the defendant in damages, to be ascertained by a suit against the said commissioner and trustee.

Attachments sued by corporations.

§ 2512. Corporations, either foreign or domestic, are entitled to process of attachment for the recovery of the debts, or ascertained demands due them. The president, cashier of the corporation, or an agent, or attorney thereof, making the affidavit and executing bond as in other cases.

Attachments against foreign corporations.

§ 2513. Process of attachment may issue for the recovery of debts against foreign corporations having property within this state, in the same manner, and subject to the same rules as in case of natural persons residing without this state.

No objection taken to form of attachment.

§ 2514. The form of attachment must be in substance as follows; but no objection shall be taken for any defect in form, if the essential matters are set forth:

Form of attachment.

The state of Alabama, } To any sheriff of the state of Al-
County. } abama: Whereas A. B., (or C. D., as the agent or attorney of A. B., as the case may be,) hath complained on oath to me, E. F., judge of the circuit court of said state, (or justice of the peace, or judge of the probate court, or clerk of the circuit court of said county, or as the

case may be,) that G. H. is (or will be, as the case may be,) justly indebted to the plaintiff in the sum of —— dollars, and the plaintiff having made affidavit and given bond as required by law, in such cases, you are hereby commanded to attach so much of the estate of G. H. as will be of value to satisfy the said debt and costs, according to the complaint; and such estate, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had at the next term of the circuit court for the county of ——, to be held at the court house thereof; when and where you must make known how you have executed this writ.

Witness my hand this, &c. E. F., clerk.

Bond and affidavit to be returned.

§ 2515. The bond and affidavit must be returned by the officer issuing the attachment, to the court to which the attachment is returnable.

ARTICLE II.

In what manner and upon what property executed.

SEC.

2516. Executed on any property, or on choses in action by garnishment.
2517. Garnishee cited to appear, and answer on oath.
2518. Levied on joint estate or interest in partnership.
2519. Executors and administrators.
2520. Garnisheed for amounts due legatees, distributees, &c.
2521. Money in the hands of sheriffs, attorneys, &c., attached, and in case of officers of court, is paid into court.
2522. Judgments against executors, &c., not to be rendered for eighteen months.
2523. Attachment of money, &c., in a trustee's hands.

SEC.

2524. Debts in suit may be attached.
2525. Attachments may be executed in any county.
2526. Branch writs of attachment.
2527. Lien of an attachment from time of levy or service of garnishment.
2528. Perishable property sold by order of court.
2529. In case of necessity, sold by sheriff before return term.
2530. Amount so received by sheriff, recovered on one day's notice.
2531. Slaves levied on, how disposed of till judgment.
2532. Indemnifying bond, when demanded by the sheriff.

Executed on any property or choses in action, by garnishment.

§ 2516. Attachments may be levied on real estate, whether the same be a fee simple or any lesser legal estate, or personal property of the defendant; or the same may be executed by summoning any person indebted to, or having in his possession, or under his control, property belonging to the defendant; and the officer executing the writ, must indorse the levy, or service thereon; and if practicable, take the property in his possession, unless replevied, as hereinafter described.

Garnishee cited to appear and answer on oath.

§ 2517. Such person is called the garnishee, and must be cited by the officer to appear at the return term of the writ, and answer upon oath whether he was indebted to the defendant at the time of the levy of the attachment, or at the time of making his answer, and whether he will not be indebted in future to him by a contract then existing; and whether he has not in possession, or under his control, per-

sonal or real property, or things in action, belonging to the defendant; a copy of which citation he must return executed, together with the attachment and levy.

Levied on joint or separate estate, or partnership interest.

§ 2518. An attachment may be levied on the joint or separate estate of joint obligors, promisors, or partners, whether resident or non-resident.

Executors and administrators.

§ 2519. Executors and administrators may be garnisheed for a debt due by the testator, or intestate to the defendant, and may commence a suit by attachment in their representative character.

Garnisheed for amounts due legatees, distributees, &c.

§ 2520. Executors and administrators may be garnisheed for debts due the legatees, or distributees, but no judgment can be rendered against them until a settlement of the estate, unless they assent to the legacy or admit assets to pay the amount claimed, or some portion thereof, out of the distributive share of the debtor.

Money in the hands of sheriff, attoney, &c., may be attached.

§ 2521. Money in the hands of an attorney at law, sheriff, or other officer, may be attached; and in the case of officers of the court, must be paid into court, to abide the result, unless the court otherwise direct.

Judgments against executors, &c., suspended for eighteen months.

§ 2522. No judgment can be rendered against an executor or administrator upon his answer in attachment, or garnishment, until the lapse of eighteen months after grant of letters.

Attachment of money, &c. in a trustee's hands.

§ 2523. Money or effects of the defendant in the hands of a trustee, may be attached and held subject to the validity of the instrument creating the trust; or the excess remaining in the trustee's hands, after the execution of the trust, if valid; but if the deed be held void, the trustee, if not guilty of actual fraud, may retain for a debt due himself, and must be protected so far as he has acted in good faith under the trust, before the levy of the attachment.

Attachment of debts in suit.

§ 2524. A debt in suit, in any of the courts of this state, may be attached; and if the suit is not depending in the same court where the attachment is brought, the court, after judgment, on proof by the garnishee of the pending attachment, must stay execution, until notified by the clerk of the court in which the attachment is instituted, that final judgment has been rendered; in which case it must make the appropriate order, according as the judgment is rendered for the plaintiff or defendant.

Executed in any county.

§ 2525. The attachment may be executed in any county of the state by the sheriff of the county in which the property is found, or in which any person may be found indebted to the defendant, or having property or things in action of the defendant in his possession, or under his control. The sheriff must take and hold the property attached, unless replevied, subject to the order of the court in which the attachment is pending.

Branch writs

§ 2526. Branch writs of attachment may issue to any county of the state, directed to any sheriff of the state of Alabama, to be executed as in the preceding section.

§ 2527. The levy of an attachment creates a lien in favor of the plaintiff, upon the estate of the defendant so levied on, from the levy; and upon the money or effects in the possession of the garnishee, from the service of garnishment. Lien of an attachment.

§ 2528. If the property levied on be perishable, it must be sold by order of the court, on motion of either party, and the proceeds of the sale be retained by the sheriff to await the decision of the cause, unless the court otherwise direct. Perishable property sold by order of court.

§ 2529. If the property levied on be of so perishing a nature that it will deteriorate greatly in value, or be destroyed before the meeting of the court, or if the charge of keeping it be very great, it is the duty of the sheriff, if not replevied, to sell it at public auction, returning the facts and the money to the court. In some cases sold by sheriff before return term.

§ 2530. The sheriff and his securities, or either of them, may be proceeded against by motion, on one day's notice, at the instance of the plaintiff, or defendant, if the plaintiff fail in the action for any money thus received for the sale of perishable property, and judgment rendered against him for the amount, and five per cent. a month from the time of the demand. Amount so received recovered by the parties if the plaintiff fail, on one day's notice.

§ 2531. When slaves levied on are not replevied, the sheriff must not put them in jail for safe keeping, unless instructed to do so by the plaintiff or defendant, but must hire them to some suitable person, taking a note with surety for the hire, which enures to the plaintiff, or to the defendant if the sale of the slaves should discharge the judgment. If he cannot hire them out, he may place them in the custody of some suitable person for safe keeping; and if he acts in good faith, is not liable for an escape. Slaves taken not imprisoned unless the parties require it.

§ 2532. When a doubt exists as to the title of the defendant to personal property, which the sheriff is required to levy upon, he may demand indemnity from the plaintiff. Indemnifying bond.

ARTICLE III.

Of attachment for rent.

SEC.
2533. Landlord has a lien on the crop for the year's rent.
2534. Attachment to collect rent.
SEC.
2535. Levied on the crop in the hands of the tenant, or any one holding for him, or purchaser's, with notice.

§ 2533. A landlord has a lien on the crop grown on rented land for rent for the current year, and is entitled to process of attachment for the recovery of the same, to be issued by any one of the officers named in section 2505, in the following cases, whether the rent be due or not at the time the attachment is sued out: Landlord's lien on the crop for rent.

1. When the tenant is about to remove the crop from the premises without paying the rent.

2. When he has removed it, or any portion thereof, without the consent of the landlord.

Attachment to secure rent.

§ 2534. Affidavit in writing being made of one of these facts by the landlord, his agent or attorney, also that the amount claimed is or will be due for rent, or will be the value of the portion of the crop agreed to be received as rent, and giving bond with surety, and with condition as in other cases of attachment, process of attachment must issue as in other cases.

Levied on the crop in the hands of tenant or purchaser from him.

§ 2535. The attachment may be levied on the crop in the possession of the tenant, or any one holding it in his right, or in the possession of a purchaser from him with notice of the lien of the landlord.

ARTICLE IV.

Of the replevy and claim of property.

Sec.		Sec.	
2536.	Replevy of property levied on, replevy bond.	2538.	Forfeiture of claim on replevy bond, and execution thereon.
2537.	Claims to property levied on, and trial of the right of property.	2539.	If the property is lost or destroyed, the value received in discharge.

Replevy of property levied on. Replevy bond.

§ 2536. The defendant in attachment, or in his absence a stranger, may replevy the goods or chattels attached, by executing bond with surety payable to the plaintiff, in double the amount of the demand, with condition that if the defendant fail in the action, he or his sureties will return the specific property attached within thirty days after judgment, which bond must be returned with the other papers of the cause.

Claims of property levied on, and trial of right of property.

§ 2537. If property attached be claimed by a person not a party to the suit, and affidavit and bond be executed as required by law in cases of trial of right of property, when levied on by a writ of fieri facias, the property must be delivered to the claimant, and the affidavit and bond be returned by the sheriff with the attachment, upon which the same proceedings must be had, as in other trials of right of property, except that the sheriff must return the original attachment to the proper county.

Forfeiture of claim on replevy bond, and execution thereon.

§ 2538. When property replevied, or which has been delivered to a claimant, is not delivered within thirty days after judgment against such claimant and against the defendant in attachment, it is the duty of the sheriff to return the bond forfeited, and execution must issue thereon against the principal and sureties in such bond, for the amount of the judgment and costs.

If the property be lost or destroyed without fault, its value may be received in discharge.

§ 2539. If any of the property so replevied should die or be destroyed without fault or negligence on the part of the person in possession, the case is governed by the provisions of section 2470.

ARTICLE V.

Proceedings against garnishees.

SEC.
2540. Garnishee, how and when examined.
2541. Judgment on answer of indebtedness, if not yet due execution suspended.
2542. Defendant's property condemned on answer admitting its possession.
2543. On refusal to deliver it, execution for the amount of the judgment.
2544. Relief when failure to deliver is without fault.
2545. Penalty for failure to answer.

Garnishee may be examined orally, and must answer within three first days of court

§ 2540. The garnishee must answer upon oath according to the terms of the citation, within the three first days of the return term of the attachment, and may, if required by the plaintiff, be examined orally in the presence of the court.

Judgment on answer of indebtedness.

§ 2541. If he answer and admit indebtedness to the defendant, judgment thereon must be rendered against him, after judgment against the defendant in attachment, for the amount so admitted, if less than the amount of the judgment against such defendant, if more, or equal thereto, then for the amount thereof. If the debt be not then payable, execution must be suspended until its maturity.

When the debt is not yet payable.

On admitting the possession of defendant's property it is condemned.

§ 2542. If he admit the possession of chattels of the defendant, judgment of condemnation must be rendered, that they be delivered up on demand, after the rendition of judgment on the attachment in favor of the plaintiff, or so much as may be necessary to satisfy the judgment, and the sheriff must make sale thereof.

On refusal to deliver it, execution issues for the amount of judgment.

§ 2543. If he fail to deliver them to the sheriff on demand, he must make return thereof to the clerk, who must thereupon issue a writ of fieri facias against him in favor of the plaintiff, for the amount of the judgment and costs.

Relief when failure to deliver is without fault.

§ 2544. If the failure to deliver property, as provided in the preceding section, is without fault or negligence on the part of the garnishee, he may obtain relief by supersedeas, according to the provisions of section 2470.

Penalty for failure of garnishee to answer.

§ 2545. If the garnishee fail to appear and answer, a conditional judgment must be rendered against him for the amount of the plaintiff's claim, as ascertained by his judgment, to be made absolute if he does not appear within the three first days of the next term and answer; a notice of the judgment must be issued to him by the clerk, to be served on him as other process by the sheriff; if he fail to appear at the next term after notice executed, or if two notices be returned not found by the sheriff of the county in which the garnishment was executed, the judgment must be made absolute.

ARTICLE VI.

Collateral issues.

SEC.
2546. Issue made to contest garnishee's answer, on denial of its truth on oath.
2547. Defendant may insist that garnishee owes more than he admits, and the question is then tried.
2548. Judgment when the answer is not sustained.
2549. Garnishee may suggest that another claims the debt, &c., and the claimant then made a party.
2550. Proceedings to try such claims.
2551. When contestant is a non-resident.
2552. If resident contestant be not found, judgment against the garnishee.
2553. Such issues do not change the jurisdiction.
2554. Bills of exceptions in such cases.
2555. Appeals.
2556. Garnishee recovers his costs on a discharge.
2557. Proceedings on death of garnishee.
2558. Judgment in attachment suspended until trial of the collateral issues.
2559. Property condemned restored if plaintiff fail in his suit.
2560. Alias writs of attachment and garnishment.
2561. Attachment abated, if issued without bond or affidavit.
2562. Attachment law liberally construed for plaintiff, and no abatement for want of bond, &c., if plaintiff will make it.
2563. Judgment discharging garnishee discharges the defendant's claim on him, he may appeal.
2564. Grounds of issue not issuable, but suit may be brought for improperly suing it out.
2565. Vindictive damages for malicious attachments.

On denial on oath of the garnishee's answer, an issue made up to try the question.

§ 2546. The plaintiff, his agent or attorney, may controvert the answer of the garnishee by making oath at the term the answer is made, that he believes it to be untrue; whereupon an issue must be made up under the direction of the court, in which the plaintiff must allege in what respect the answer is untrue, and, if required by either party, a jury must be impannelled to try the facts.

Defendant may insist that garnishee owes more than he admits, and the question is then tried.

§ 2547. The defendant, upon the coming in of the answer, may allege that the garnishee is indebted to him in a larger sum than he has admitted, or that he holds property of the defendant not admitted by him in his answer, which being reduced to writing, setting forth particularly in what respect the answer is deficient, and sworn to, thereupon an issue must be made up under the direction of the court to try the fact by a jury, if required by either party; but this controversy does not prevent the plaintiff from taking judgment for the sum admitted to be due by the garnishee, or for a condemnation of the property admitted to be in his hands.

Judgment in case the answer is not sustained.

§ 2548. If this issue be found against the garnishee, judgment must be rendered against him for the amount of money or property in his hands not admitted by him, which must be in favor of the plaintiff, if necessary to satisfy his claim or judgment against the defendant, or in favor of the defendant if the judgment has been satisfied.

Garnishee may allege that another person claims debt.

Proceedings to make the claimant a party.

§ 2549. When the garnishee by his answer, or at any time before final judgment against him, alleges that he has been notified that another person claims title to, or an interest in, the debt or property which by his answer he has admitted to be due, or to be in his possession, the court must suspend proceedings against the garnishee, and cause a notice to issue

to such person, to appear at the next term of the court and contest with the plaintiff the right to the money or property.

Proceedings to try such claims.

§ 2550. If he appear, he must be required to propound his claim in the disputed property or debt, in writing, and make oath thereto, upon which the plaintiff must take issue in law or in fact, and the issue in fact must be tried by a jury, if required by either party. If the issue be found for the plaintiff, judgment must be rendered against the garnishee on his answer; if for the contestant, the garnishee must be discharged.

If contestant be a non-resident.

§ 2551. If the contestant be a non-resident, the contest must be stayed six months, and the same proceedings had as in the case of a non-resident defendant.

If resident contestant be not found judgment against the garnishee.

§ 2552. If two notices to the resident contestant be returned "not found," judgment must be rendered against the garnishee on his answer.

Such issues do not change jurisdiction.

§ 2553. The interposition of these collateral issues does not affect the jurisdiction of the court obtained by levy of the attachment.

Bills of exceptions in such cases.

§ 2554. Upon the trial of these collateral issues, either party may reserve any question by bill of exceptions, for revision, and judgment for costs must be rendered against the unsuccessful party.

Appeals.

§ 2555. An appeal lies to the supreme court at the instance of the plaintiff, the defendant, the garnishee, the contestant, or claimant.

Costs paid garnishee on a discharge.

§ 2556. When the answer of the garnishee is not controverted, or if controverted is found for him, he is allowed the pay of a juror during his attendance, and an attorney's tax fee may be allowed to be paid out of the effects attached, for which execution may issue. If there be no effects, then from the plaintiff, for which he may have judgment and execution.

Proceedings on death of garnishee.

§ 2557. If the garnishee die after he has been summoned as garnishee, and pending the litigation, the proceedings may be revived against his legal representatives; so if the contestant die, after notice to appear and contest with the plaintiff, the right to the money or property in the hands of the garnishee, the suit may be revived in the name of his legal representatives.

Judgment in the attachment suspended until trial of collateral issues.

§ 2558. No judgment can be rendered against the defendant in attachment, where a claim has been interposed to try the right of property, where the answer of the garnishee is contested, or a contest has arisen about the title or interest in the money or goods attached, until these questions are settled; unless other property or effects of the defendant be attached, about which no contest has arisen.

Property condemned restored at plaintiff's cost in the attachment suit.

§ 2559. If the plaintiff do not obtain judgment against the defendant in attachment, all property condemned, where a claim had been interposed, must be restored to the claimant at the costs of the plaintiff.

Alias attach-

§ 2560. Alias writs of attachment, or new writs of garn-

ments or writs of garnishment.

ishment, may be issued by the clerk, without a renewal of the bond or affidavit, in cases where no property has been found, or not sufficient to satisfy the debt, or when pending the suit, the plaintiff wishes to garnishee other persons.

Abated if issued without bond or affidavit.

§ 2561. Attachments issued without affidavit and bond, as herein prescribed, may be abated on plea of the defendant, filed within the three first days of the return term.

Attachment law liberally construed for plaintiff, and all defects of form may be amended.

§ 2562. The attachment law must be liberally construed, to advance the manifest intent of the law, and the plaintiff, before or during the trial, must be permitted to amend any defect of form, in the affidavit, bond or attachment; and no attachment must be dismissed for any defect in, or want of a bond, if the plaintiff, his agent or attorney is willing to give or substitute a sufficient bond.

Effect of judgment discharging garnishee as between him and the defendant.

§ 2563. The judgment of the circuit court, condemning the debt or property in the hands of the garnishee, to the satisfaction of the plaintiff's demand, is conclusive as between the garnishee and the defendant, to the extent of such judgment, unless the defendant prosecute an appeal from such judgment, which he may do in his own name; and if such judgment is superseded by bond, and the garnishee notified of the fact, he is not permitted to discharge such judgment pending the appeal.

Defendant may appeal.

Cause of issue of attachment not to be denied, but suit may be brought for issuing it.

§ 2564. The defendant must not deny or put in issue the cause for which the attachment issued, but may at any time within three years, of the suing out of the attachment, before or after the suit is determined, commence suit on the attachment bond, and may recover such damages as he has actually sustained, if the attachment was wrongfully sued out.

Damages for malicious attachments.

§ 2565. If sued out maliciously, as well as wrongfully, the jury may, in addition, give vindictive damages.

ARTICLE VII.

Ancillary attachments.

Sec.		Sec.	
2566.	Attachments in suits already commenced.	2567.	Same mode of proceeding as in other attachments.

Attachments in suits already commenced.

§ 2566. When a summons has been returned executed, the plaintiff, his agent or attorney may at any time before judgment, make affidavit before the clerk of the court in which the suit is pending, and give bond with security as in cases of original attachment, and thereupon the clerk must issue an attachment returnable as in other cases.

Same proceedings as in other attachment suits.

§ 2567. The suit must thereafter proceed in all respects, as if it had been commenced originally by attachment.

ARTICLE VIII.

Judicial attachments.

Sec.		Sec.	
2568.	Attachment when resident defendant evades service of summons.	2569.	Proceedings in such case.

§ 2568. When a summons has been returned "not found," as to all or any of the defendants, residents of the county, if the plaintiff, his agent or attorney, make affidavit that the defendant has evaded the service of the process, the court must direct an attachment to issue returnable to the next term of the court, and the cause must in all respects proceed as against such defendant, as if originally commenced by attachment. Attachment when resident defendant evades service of summons.

§ 2569. The plaintiff may, notwithstanding such judicial attachment, proceed to judgment against any of the defendants on whom process was served; but a judgment and satisfaction of the debt or claim, abates the attachment at the costs of the plaintiff. Proceedings in such cases.

ARTICLE IX.

Of the pleadings in attachment.

Sec.		Sec.	
2570.	Complaint to be filed within three days of the term.	2572.	Proceedings on appearance of defendant, or judgment by default.
2571	Complaint not filed until maturity of the debt.	2573.	Execution for judgment not paid by property attached.

§ 2570. The plaintiff must within the three first days of the return term of the attachment, file his complaint as in suits commenced by summons, but the cause does not stand for trial until the next term of the court. Complaint to be filed within three first days of court

§ 2571. If the debt is not due, the plaintiff is not required to file his complaint until the maturity of the debt. Complaint not filed till maturity of the debt.

§ 2572. If the defendant appear and plead, the cause proceeds as in suits commenced in the ordinary mode. If he make defence, the plaintiff may, at the trial term, take judgment final, by nil dicit, or execute a writ of inquiry of damages, as may be necessary. Proceedings on appearance of defendant. On default.

§ 2573. When the property attached, and in the hands of the garnishee, is not sufficient to satisfy the judgment of the plaintiff, against the defendant, the clerk must issue execution for the residue, which may be levied on any property of the defendant. Execution for balance of judgment not paid by property, &c., attached.

ARTICLE X.

Attachments against steam boats.

Sec.		Sec.	
2574.	Attachments for injuries caused to vessels, &c., by other steamboats, by negligence, racing, &c.	2581.	Mode of trial when bond is filed, and when none.
2575.	Affidavit of facts, and bond before issue.	2582.	On proof of injury, defendant must prove due diligence.
2576.	On filing the affidavit and bond the officer issues the writ.	2583.	If bond not executed in sixty days, boat sold, &c.
2577.	Boat seized and held to satisfy the judgment.	2584.	Priority of debts, when there are several attachments.
2578. 2579.	Replevy of boat, &c.	2585.	After judgment, execution may issue on the bond filed.
2580.	The value of the boat discharges the bond.	2586.	Any other remedy may be pursued.

Remedy for injuries to other vessels caused by racing of steam boats, or negligent management of steam boats and other vessels.

§ 2574. If any steam boat, vessel, or water-craft of any description, from the negligence or want of skill of the master, pilot, engineer, or other officer, or whilst racing with another boat or vessel, runs into, runs foul of, destroys, or injures, any other boat, vessel, barge, flat boat, or other water-craft, by means whereof the property of any person on board of such boat, or other water-craft, is injured or destroyed, the person so injured has a lien upon the boat or vessel causing the injury, to the amount of the loss, which may be enforced as hereinafter provided.

Lien on the boat.

Affidavit of facts and bond filed before issue of attachment.

§ 2575. The person so injured, his agent or attorney, must make affidavit of the loss sustained, and the cause thereof, stating the name of the boat or vessel, before any judge of the circuit court, or judge of probate, clerk of the circuit court, or justice of the peace, and also execute a bond with surety, payable to the owners of the boat or vessel, by name, if known, if not, payable to the "owners," in double the amount of the value of the property injured or destroyed, with condition to prosecute the attachment to effect, and to pay the owners all such costs and damages as may be sustained by the wrongful or vexatious suing out such attachment.

On filing affidavit and bond, officer issues the attachment.

§ 2576. Upon the execution of such bond and affidavit, the judge, clerk, or justice must issue an attachment, which may be made returnable to any circuit court in the state, directing any sheriff of the state of Alabama to seize and retain the boat, or other water-craft, her tackle, apparel, and furniture, until discharged by due course of law.

Boat, &c., when seized, retained to satisfy the judgment.

§ 2577. After such seizure, the sheriff must retain the boat or vessel in his possession, together with the tackle, apparel, &c., to answer the judgment which may be rendered, and make return thereof, together with the affidavit, bond, and attachment, to the court to which the process is returnable.

Replevy of boat, &c.

§ 2578. The boat or vessel seized may be released from custody, by the master or owner of the boat or vessel, or

other person, entering into bond with surety, to be approved by the sheriff, in double the amount of the alleged injury, payable to the plaintiff, with condition to satisfy the judgment which may be rendered on the attachment.

Idem.

§ 2579. Or the master, owner, or some person for him, may enter into bond with surety, in double the estimated value of the boat, tackle, apparel, &c., payable to the plaintiff, with condition to pay the plaintiff the value of the vessel, or boat, her tackle, apparel, &c., at the time of the seizure, or so much thereof as will satisfy the judgment and costs; and for the purpose of ascertaining the value of the boat or vessel, her tackle, apparel, &c., the sheriff may appoint three disinterested persons, to make appraisement thereof.

The value of the boat if paid discharges the bond.

§ 2580. The obligors in the bond last mentioned, may pay into court the appraised value of the boat or vessel, and such payment is a discharge of the bond.

Proceedings on trial when bond is filed.

§ 2581. If either of the above bonds be executed, the obligors therein are the defendants in the attachment. If no bond be executed, to release the boat or vessel, the affidavit must be received as evidence of the facts therein stated, and judgment be rendered ex parte, for the demand of the plaintiff, which may be at the first term after the seizure, if the attachment was executed thirty days previous to the judgment.

When no bond filed.

On proof of injury defendant to show due diligence to avoid it.

§ 2582. In any trial under this article, proof that the loss was caused by the boat or vessel attached running foul of, or running into, the boat or water-craft in which the plaintiff's property was, is presumptive evidence that the injury was caused by the negligence or want of skill of the officers of such boat; and the burthen of proof is then cast on the owners of such boat, of proving that the collision was accidental, and without the fault of the officers thereof.

Boat sold if no bond executed in sixty days.

§ 2583. If no bond be executed, for the release of the boat from seizure, within sixty days thereafter, the sheriff must sell the same for cash, giving thirty days' notice of the time and place of sale, and make return thereof to the court in which the attachment is pending.

Application of proceeds when there are several attachments.

§ 2584. When there are more attachments than one, if the proceeds of the sale are not sufficient to discharge all the judgments, it must be divided among them rateably, or according to priority. An appeal from such disposition of the fund must be prosecuted within six months thereafter.

Effect of bond after judgment.

§ 2585. The bonds required by this article to release the boat from seizure, must be filed in the clerk's office, and after judgment in favor of the plaintiff, have the force and effect of judgments, upon which execution may issue for the amount of such judgment and costs.

Any other suit may be brought.

§ 2586. The provisions of this article must not be construed so as to prevent a resort to any other legal remedy.

CHAPTER II.

TRIAL OF RIGHT OF PROPERTY.

SEC.
2587. On claim of property levied on under affidavit, and bond being given, it is restored to the claimant.
2588. On return of such claim by the sheriff, issue is joined between plaintiff and claimant.
2589. Burthen of proof on the plaintiff; damages for delay.
2590. On failure to deliver the property, if condemned, execution issues on the bond.
2591. Proceedings when property levied on under execution from another county is claimed.
2592. Proceedings on forfeiture of bond in such cases.
2593. Plaintiff may levy on other property.
2594. Claim bond releases actions against the sheriff.
2595. Mortgagee of personal property may claim it, but plaintiff may pay off the debt.

Claim to property levied on under execution; how made.

§ 2587. When an execution is levied on personal property claimed by any person not a party to the writ, he is entitled to try the right to such property, before a sale thereof, by making affidavit that he has a just claim to the property levied on, and also executing a bond payable to the plaintiff, in double the amount of the execution, with sufficient surety, to be approved by the sheriff, with condition to have the property forthcoming for the satisfaction of the judgment, if it be found liable therefor; and also for the payment of such costs and damages as may be recovered for putting the claim in for delay. Thereupon the property levied on must be delivered to the possession of the person from whom it was taken.

On bond and affidavit, possession delivered to the claimant.

Return by sheriff on the execution.

§ 2588. The sheriff must return the affidavit and bond to the next term of the court from which the execution issued, when an issue must be made between the plaintiff in execution and the claimant, in which the former must be required to allege that the property levied on is the property of the defendant in execution, and liable to its satisfaction.

Issue made up between plaintiff and claimant.

Burthen of proof on the plaintiff.

§ 2589. Upon the trial of the issue, the burthen of proof is upon the plaintiff in execution, and if the jury subject the property to the payment of the execution, they must, as far as practicable, assess the value at the time of trial of each article separately. If it be shown that the claim was interposed for delay, they must also assess such damages as the plaintiff may be entitled to, not less than ten per centum on the execution.

If found subject, damages for delay.

On failure to deliver the property if condemned, execution issues on the bond.

§ 2590. If judgment be rendered against the claimant, and he fail to deliver the property to the sheriff within thirty days thereafter, to satisfy the execution of the plaintiff, he must indorse the bond forfeited; and the clerk must thereupon issue an execution against all the obligors therein for the amount of the judgment of the plaintiff, if that is less than the value of the property as assessed by the jury, or for the amount of such assessed value, if less than the amount of the judgment. Also for the damages, if any were assessed, and the costs of the trial of the right of property.

Returns of execution, affidavit and bond on claim made of property levied on under execution from another county.

§ 2591. When the levy is made in a different county from that in which the judgment is rendered, if a claim is interposed to the property, it is the duty of the sheriff to return the original execution to the office of the clerk from which it issued, with his return thereon of the interposition of a claim; and make true copies of the bond and affidavit, which he must return with the execution. He must also make a true copy of the execution, and the returns thereon, which, with the affidavit and bond, he must return to the office of the clerk of his own county, where the trial of the right of property is to be had. The copies thus required to be made, certified by the sheriff to be true copies of the original, must be received in lieu of, and have the same effect in all respects as the originals.

Proceedings on forfeiture of bond in such cases.

§ 2592. If the property is found liable to the plaintiff's execution, and is not delivered up within thirty days by the claimant to the sheriff of the county where the trial of the right of property was had, he must indorse the bond forfeited, and thereupon the clerk must issue execution as in other cases of trial of right of property, except that he must make the execution for the collection of the judgment, and the damages awarded on the trial of the right of property, (if any,) returnable to the office of the clerk of the court whence the original execution issued, of which, and the time of its receipt by the sheriff, he must give the clerk thereof written notice, which is presumptive proof of the fact against the sheriff, and must also issue a separate execution for the costs of his own court.

Plaintiff may levy on other property.

§ 2593. The interposition of a claim and trial of the right of property, does not prevent the plaintiff from levying on other property of the defendant in execution.

Claim made releases actions against sheriff for trespass.

§ 2594. A claim interposed for the trial of the right of property, is a release by the claimant in favor of the sheriff, from all damages for seizing such property.

Mortgagee of personal property may claim it.

Plaintiff may pay the mortgage debt.

§ 2595. When personal property mortgaged to another, is levied on by execution, the mortgagee or his assignee may try the right of property as herein provided; but the plaintiff in execution may discharge the mortgage debt, and then it shall be the duty of the sheriff to proceed and sell, as well for the payment of the mortgage, which must be first satisfied, as for the satisfaction of the execution.

CHAPTER III.

SUMMARY JUDGMENTS.

ARTICLE 1. General rules.
" 2. Proceedings against sheriffs, coroners, and other executive officers.
" 3. In favor of sheriffs, &c.
" 4. Against clerks of the circuit and supreme courts.
" 5. Against judge of probate, tax collectors, tax assessors, notaries public, and commissioners from other states.
" 6. Against attorneys at law.

ARTICLE I.

General rules.

SEC.
2596. On notice of motion, judgments rendered summarily against certain officers, &c.
2597. Made by the injured party against the defaulter and his sureties, and judgment against those having notice.
2598. Entry on the motion docket, is notice to an officer of court, and his sureties.
2599. Court to try the case, unless a jury is demanded, and the case is tried immediately.
2600. In what court the motion should be made.

Notice of motion for summary judgment; grounds of motion stated.

§ 2596. Judgment may be rendered summarily against the persons, and for the defaults hereinafter stated, upon notice in writing by the party aggrieved, that a motion will be made for judgment, succinctly stating in such notice the cause for which such motion will be made, and the term of the court, and county.

By whom made against the officer and his sureties. Judgment against the parties having notice.

§ 2597. The motion may be made by the party aggrieved, or his legal representatives against the person in default, and his sureties upon his official bond and judgment, and must be rendered against such of the parties, whether principal or surety, as may have received notice of the intended motion.

Entry on motion docket is notice to officers of court and sureties.

§ 2598. A motion entered on the motion docket, in term time, is sufficient notice to all officers of the court and their sureties.

Court to try the case unless a jury trial is demanded. Tried immediately.

§ 2599. Unless in cases otherwise directed by this chapter, the court must hear and determine the motion, and render judgment upon the evidence, without a jury, unless an issue is tendered, and a jury trial demanded, when a jury must be immediately impannelled to try the facts, unless good cause be shown for a continuance.

Court in which the motion must be made.

§ 2600. The summary remedies here given, must be enforced in the manner following, except in cases otherwise specially provided in this chapter: When the motion is against a sheriff, coroner, clerk, or other officer of court, or their sureties, the motion must be made in the circuit court of the county in which such officer was acting officially at the time of the default, or in the court to which the process was returnable, when the default consists in the failure to execute or return process, or to pay over money collected thereon. In all other cases not specially provided for, the motion must

be made in the circuit court of the county in which the person moved against resides; if he has no permanent residence, then in any county where he may be found.

ARTICLE II.

Proceedings against sheriffs, coroners, and other executive officers.

SEC.
2601. Judgment on three day's notice to sheriff, or officer, who received or executed the writ.
2602. Penalty for failing to return an execution, or pay over money collected on one.
2603. For failure to make the money on an execution.
2604. For false and fraudulent return.
2605. For failure to give notice of the collection of money.
2606. For failure to indorse on an execution the true date of its delivery.
2607. For failure to execute mesne process.
2608. Judgment rendered in favor of defendant in execution, on three days' notice, in the following cases:
2609. For failure to pay over excess received on sales.
2610. For failure to return the credits on an execution.
2611. For failure to refund money when its collection has been enjoined.
2612. In favor of clerk of supreme court on three days' notice.
2613. Grounds of such judgment.
2614. Copy of the execution and certificate of clerk are evidence, but sheriff may deny the receipt or aver the return of an execution on oath.

§ 2601. Judgments must be rendered for the plaintiff on three days' notice, in the following cases, against the sheriff, coroner, or other officer receiving or executing the writ: Notice to sheriff or officer who received or executed writ.

§ 2602. For failing to return an execution, twenty per centum on the judgment. For failing to pay over money collected upon an execution, on demand of the plaintiff, his agent or attorney, judgment for the amount so collected, and five per centum per month damages from the time such demand was made. Penalty for failing to return an execution, for refusing to pay over money.

§ 2603. For failing to make the money on an execution, which by due diligence could have been made, judgment for the amount of the execution, interest, and ten per centum damages. For failing to make the money on an execution.

§ 2604. For fraudulently making a false return, judgment for the amount of the execution, interest, and ten per centum damages thereon. For false and fraudulent return.

§ 2605. For failing to notify the plaintiff, his agent or attorney, of the collection of money by execution, five per centum per month, on the amount collected, from the time when the notice should have been given, not to exceed twenty-five dollars a month. For failure to give notice of the collection of money

§ 2606. For failing to indorse on an execution the true date of its delivery to him; judgment for ten per centum on the amount of the execution. The officer is also responsible for any injury or loss which may arise from such omission. For failure to indorse on an execution the true date of its delivery

§ 2607. For failing to execute a summons, attachment, or Penalty for

failure to execute mesne process.

other mesne process which by due diligence could have been executed; judgment for a sum not less than fifty nor more than five hundred dollars, to be ascertained by a jury. This remedy not to preclude the party injured from a resort to other legal modes of redress.

Judgment in favor of defendant on three days' notice.

§ 2608. Judgment must in like manner be rendered in favor of the defendant in execution, against the sheriff or coroner, on three days' notice.

For failure to pay over excess of money received on sales.

§ 2609. For the failure to pay over on demand any excess of money which may remain upon a sale by execution, after the satisfaction thereof and the costs; judgment for the amount of such excess, and five per centum per month after demand.

For failure to return payment of all or part of an execution.

§ 2610. For failing to return an execution wholly or partially satisfied; twenty-five per centum on the amount paid.

For failure to pay over money the collection of which has been enjoined.

§ 2611. For failing to pay over on demand money paid or collected on an execution, the whole or any part of which is enjoined in chancery; judgment for the amount so enjoined, and five per centum per month on the amount from the time of the demand.

Summary judgment in favor of clerk of supreme court.

§ 2612. Judgment must in like manner be rendered in favor of the clerk of the supreme court, against the sheriff or coroner, on three days' notice.

Grounds for such judgments.

§ 2613. For failure to return an execution from the supreme court, for making a false return thereon, for failing to make the money when by due diligence it could have been made, or failing on demand to pay over money collected on an execution; judgment for the penalties herein prescribed for the same defaults on executions issued from the circuit court.

Copy of the execution and certificate of clerk are evidence.

§ 2614. On the trial of the motion a copy of the execution made and certified by the clerk, with the return thereon if any was made, or a statement that no return was made, if such be the fact, together with his certificate that the execution was received by the sheriff, or sent to him by mail, is evidence of the facts so certified, without producing a transcript of the record from the proceedings of the supreme court; and also presumptive evidence that the writ was received by the sheriff, unless he states under oath, in writing, that he never received the writ or returned it according to law.

Sheriff may deny the receipt or aver a return on oath.

ARTICLE III.

In favor of sheriff, &c.

SEC. 2615. Summary judgments for them on three days' notice, in the following cases:

1. Against parties to indemnifying bonds.
2. Against their deputies for any default.

Judgment in

§ 2615. Judgment must in like manner be rendered sum-

marily in favor of the sheriff or coroner, on three days' notice of the pendency of the suit: favor of sheriff on three days' notice.

1. Against the obligors on bonds given to indemnify the officer for levying an execution or attachment, or for making sale of property so levied on or attached, after judgment against the officer for making such levy or sale; judgment for the same amount rendered against such officer. Against parties to indemnifying bonds

2. Against the deputy of the sheriff and his sureties for the amount of any judgment which may be rendered against the sheriff or coroner for the default of such deputy. Against the deputy for any default.

ARTICLE IV.

Against clerks of circuit and supreme court.

SEC.
2616. Judgment against circuit clerk and his sureties, on three days' notice.
2617. For failing to enter officer's return on an execution.
2618. For failing to pay over money received officially.
2619. For failure to issue executions.
2620. For failure to pay money deposited in court under section 2144.
2621. For failure to pay over to the county treasurer funds collected for the county.
2622. For failure to return statement of fines for the county.
2623. In favor of comptroller on ten days' notice.
2624. For failure to pay over taxes on commissioner's or notary's seal.
2625. For failure to issue execution for forfeiture to the state.
2626. For fines received and not paid over.
2627. Against the clerk of the supreme court for the amount of the state tax on suits received and not accounted for.

§ 2616. Judgment must in like manner be rendered summarily against the clerk of the circuit court and his sureties, on three days' notice. Judgment against circuit clerk on three days' notice.

§ 2617. In favor of the plaintiff in execution, for failing to enter on the execution docket the return made upon an execution by the proper officer, within three days after the return is made; judgment for twenty per centum on the amount of the execution, and interest thereon. For failing to enter officers return on an execution.

§ 2618. For failing on demand to pay over money received by him on any judgment, or paid into court on a plea of tender or other plea, or by rule of court; judgment for the sum so received by him, with five per centum per month on the amount, after demand. For failing to pay over money received by him in his office.

§ 2619. For failing to issue execution as prescribed by sections 2424 and 2427, within the time prescribed by law after the adjournment of the court, or at any time subsequent, on request of the party interested, his agent or attorney, or for failure to issue execution within five days on all bonds returned forfeited, and upon which execution may rightfully issue, and upon judgments remanded from the supreme court; judgment for twenty per centum on the amount of the judgment. For failing to issue executions as required by law.

For failure to pay money deposited in court under section 2144.

§ 2620. In favor of the party entitled thereto, for failing on demand to pay over money received by him under section 2144; judgment for the amount so paid, and five per centum damages thereon for each month after demand made.

For failing to pay over to county treasurer county funds collected.

§ 2621. In favor of the county treasurer for failing to pay over to the county treasurer, on demand, all fines or forfeitures or other moneys belonging to the county treasury; judgment for the amount thereof, and five per cent. per month on the amount from the time of the demand.

For failure to return statement of fines, &c., to the county.

§ 2622. For failing to return to the county treasurer, within ten days after the adjournment of court, the statement required by the provisions of section 781, of all fines, forfeitures, and penalties belonging to the county assessed during the previous term; judgment for fifty dollars, for the use of the county.

In favor of comptroller on ten days notice.

§ 2623. In favor of the comptroller of public accounts, on ten days' notice to the circuit court held at the seat of government, or that of the county in which the clerk, or any surety proceeded against, resides.

For failure to make returns of tax as collected on notaries and commissioners' seals.

§ 2624. For failing to make the return required by the provisions of section 483, not less than one hundred nor more than five hundred dollars, as may be adjudged by the court.

For failure to issue executions for the state.

§ 2625. For failing to issue executions for forfeitures belonging to the treasury of the state, as required by the provisions of section 2424; judgment for the sum of two hundred dollars.

For fines received and not paid over

§ 2626. For all fines, penalties, or forfeitures belonging to the state treasury, received by the clerk and not paid into the treasury within one month after their receipt; judgment for the amount so received, and ten per cent. damages thereon.

Against the clerk of the supreme court in certain cases.

§ 2627. Against the clerk of the supreme court and his sureties, for failing to make return and payment according to the provisions of and within the time prescribed by section 405, for the amount of the state tax on all cases decided at the regular term of such court preceding the regular term referred to in such section, and on all other cases decided before such term, on which the state tax has not been paid by such clerk; to be recovered on motion to be made by the attorney general, in the name of the comptroller of public accounts, in the circuit court of the county in which the seat of government is located, on three days' notice; and on failure to produce the dockets of the supreme court, upon reasonable notice, a peremptory attachment may issue against such clerk, without any rule to show cause.

ARTICLE V.

Against judges of probate, tax collectors, tax asssessors, notaries public, and commissioners of other states.

SEC.
2628. Judgment in favor of the comptroller in the circuit court on ten days' notice.
2629. For failure to make return of taxes collected.
2630. For failure to pay them over when collected.
2631. Against judge of probate for failure to return abstract of books of assessment.
2632. Against defaulting tax collectors.
2633. Certificate of the comptroller, evidence of the facts stated.
2634. Against tax assessor for failure to return assessment books.

Summary judgment against certain defaulters in circuit court on ten days' notice.

§ 2628. Judgment must in like manner be summarily rendered, in favor of the comptroller of public accounts, against the defaulters hereinafter named, and their sureties, in the circuit court held at the seat of government, or in that of the county in which any defaulter, or his sureties, may reside, on ten days' notice.

For failure to make return of taxes collected.

§ 2629. Against the judge of the probate court, notaries public, and commissioners of deeds for other states, for failing to make the returns required of them by sections 483 and 484; judgment for a sum not less than one hundred, nor more than one thousand dollars.

For failure to pay the sums so collected.

§ 2630. Against the officers specified in the preceding section, for failing to make the payments as required by the provisions of sections 483 and 484, and for the amount of money received, or collected, with ten per cent. damages thereon, and interest from the time such payment should have been made; and on the trial of such motion, the return of such officer is conclusive evidence against him and his sureties, for the amount therein specified; and if no return has been made, the return of any preceding year, in relation to the same subject-matter, made by such officer, or any other officer of the same county, required by law to make such return, may be given in evidence, to show the amount so received or collected.

Against judge of probate for failure to return abstract of assessment books, &c.

§ 2631. Against the judge of probate, for failing to perform the duties required, within the time, and in the manner prescribed by section 444, for a sum not less than two hundred or more than five hundred dollars.

Against defaulting tax collectors.

§ 2632. Against defaulting tax collectors for the amount of taxes collected by them, not paid into the treasury; judgment for the amount not paid into the treasury, interest from the time such payment should have been made, and twenty-five per cent. damages thereon.

Certificate of the comptroller evidence of facts

§ 2633. Upon the trial of any motion made by the comptroller, his certificate of the act, or omission, upon which such motion is founded, and of the amount due the state, is presumptive evidence of the fact.

Against tax assessors for failure to re-

§ 2634. Against any tax assessor who fails to make return of his assessment books according to the provisions of and

turn assessment books.

within the time prescribed by section 427, or to comply with the provisions of section 445, for every ten days he so fails, not less than fifty or more than five hundred dollars, as the court may adjudge.

ARTICLE VI.

Against attorneys at law.

SEC.
2635. Summary judgments for money collected and not paid over. Proceedings in such cases.
2636. Plaintiff to show his title; and attorney's compensation settled by the court.
2637. Personal notice to be given the attorney.

Summary judgments against attorneys at law for money collected

§ 2635. Judgment may in like manner be rendered against any attorney in this state, who fails to pay over money collected by him in that capacity, on demand made by the person entitled thereto, his agent or attorney, for the amount due, interest thereon, and damages, at the rate of five per cent. per month after such demand, on the aggregate amount, in the circuit court of the county in which such attorney resides, or if he has no known place of residence, in this state, in the circuit court of any county, on three days' notice; but such attorney may, if a doubt exists as to the right of the person making the demand, or if there be a dispute as to his compensation, pay the money into court, the first court after receiving notice of such motion, if notice of the same is given before court; or into the court at which the notice is given, if given during court, and have such questions there decided, without being liable to interest or damages.

Proceedings in such cases.

Plaintiff to show his title and compensation fixed by the court.

§ 2636. The court may require the party claiming the money to establish his right thereto, and in determining the question of compensation, may examine both parties, and give costs in its discretion.

Personal notice to be given.

§ 2637. In the cases provided for in the two preceding sections, personal notice is necessary.

CHAPTER IV.

PROCEEDINGS BY SURETIES.

SEC.
2638. Surety on replevin bond may demand indemnity.
2639. Affidavit made of refusal to give indemnity.
2640. Writ of seizure then issues.
2641. If bond is given, it is filed with the original bond.
2642. Proceedings on writ of seizure when the property is perishable.
2643. Judgments rendered for sureties against their principals and each other, on motion with three days' notice.

SEC.
2644. Cases in which they are rendered for the surety against the principal.
2645. When allowed sureties against each other.
2646. Surety not to confess judgment, if principal will defend and indemnify him.
2647. Surety may require the creditor to sue the principal, or other sureties, and discharged by failure.
2648. This does not apply to bond with collateral conditions, or administrators' or guardians' bonds.
2649. These rules apply generally to executors and administrators of sureties.
2650. Court to which the motion should be made.

Surety on replevy bond may demand indemnity from principal.

§ 2638. When the principal in any replevin bond is wasting the replevied property, or is removing, or about to remove himself, or property, out of the state, the surety or sureties to the replevy bond may demand of the principal adequate indemnity against loss, by collateral security.

Affidavit of refusal to give indemnity.

§ 2639. If such security be not given within five days after demand made, the security may make affidavit thereof before the clerk of the circuit court in which such bond is filed, setting forth the demand of the principal for collateral security, for some one or more of the causes mentioned in the preceding section, and that the principal has failed to give such security.

Writ then issues to seize property.

§ 2640. Thereupon the clerk must issue a writ directed to the sheriff, commanding him to seize the replevied property, and hold the same until the decision of the cause in which it was replevied, or until the principal execute bond with sufficient surety, in the same penalty as the replevin bond, payable to the surety, with condition to have the property forthcoming to abide the decision in the principal cause, or to pay and satisfy the judgment rendered therein.

If bond is given it is filed with the original bond

§ 2641. If the bond is given, it must be filed with the original replevy bond, and execution may issue thereon upon a breach of the original replevy bond, in favor either of the plaintiff, or of the surety.

Proceedings on such writ when property is of a perishable nature.

§ 2642. If bond is not given, and the property is seized, and is of a wasting or perishable nature, or when the expence of keeping it would materially affect its value, it must be sold by the sheriff, in the same manner as property levied on by execution, and return thereof made as upon a writ of fieri facias.

Judgment for sureties on notes, bills, &c., against their principals or against each other on three days' notice.

§ 2643. Sureties whether bound on the contract or instrument with the principal debtor, as joint, or joint and several obligors or promisors, or as accommodation drawer, acceptor, or indorser of a bill of exchange, or in any other manner, are entitled to a summary judgment against their principal, and between each other, by motion in the circuit court, on theee days' notice thereof, in the cases, and in the manner following:

§ 2644. Against the principal debtor:

When allowed, the surety against his principal.

1. When a judgment has been obtained against the surety which he has satisfied, either wholly or in part, for the amount paid and interest.

2. When a surety or sureties are sued without their principal, upon notice given to the principal of the pending suit, if judgment is obtained against the surety, judgment for the same amount must be rendered against the principal, in favor of the surety.

3. A surety to a debt payable in bank, which by its charter is entitled to a summary remedy against its debtors, may upon the payment by him of the debt to the bank, be entitled to the same remedy against his principal, in the circuit court of the county in which the principal resides, or if he be a non-resident or has no fixed residence, then in the circuit court of any county in the state. The certificate of the president or cashier of the bank, of the payment of the debt by the surety, is evidence of the fact of payment.

§ 2645. Between sureties:

When allowed, one surety against another.

1. A surety who has paid the debt of his principal, may recover of each of his co-sureties their aliquot proportion of the debt. If any of the co-securities are insolvent, the proportion of such insolvent must be excluded from the estimate, and judgment be rendered against the remaining solvent sureties, for their proportion of the debt, as if such insolvent was not a co-surety.

2. When suit is pending against one or more sureties, either in connection with or without their principal, if the principal is insolvent, the surety so sued may, on notice of the pending suit, recover judgment against such of the co-sureties as are not sued in that action, for their aliquot proportion of the debt, excluding from the estimate the proportion of such of the sureties as are insolvent, as if such insolvent had not been a surety.

Judgment not confessed by surety if principal will defend and give security to his surety.

§ 2646. No surety when sued, can confess judgment or suffer judgment to pass by default, if the principal debtor, on being notified of the pending suit, is willing to defend the suit at his own cost, and gives good and sufficient collateral security to the surety, to be approved by the court.

Surety may require creditor to sue principal, or other sureties, and on failure to sue to first term is discharged

§ 2647. A surety upon any contract for the payment of money, or for the payment or delivery of personal property, may require the creditor or any one having the beneficial interest in the contract, by notice in writing, to bring suit thereon against the principal debtor, or against any co-surety to such contract; and if suit be not brought thereon, pursuant to such notice, to the first court to which suit can be brought after the receipt of such notice, and prosecuted with diligence according to the ordinary course of law, the surety giving such notice is discharged from all liability as surety, or his aliquot proportion of the debt, as the case may be. One surety may give the notice in behalf of his co-sureties.

Not to apply to bonds with collateral conditions or to administrators bonds

§ 2648. The remedy secured by the preceding section, does not apply to bonds or other contracts with collateral conditions, or to the bonds of executors, administrators, guardians or public officers.

These rules operate for

§ 2649. All the provisions of this chapter enure to the

benefit of the executors or administrators of the creditor or surety. executors and administrators.

§ 2650. In cases not otherwise provided for in this chapter, the motions hereby given must be made in the circuit court of the county in which the parties, or any one of them reside, against whom the motion is made. If they are non-residents, or have no fixed residence in the state, then in the circuit court of any county in the state. Court in which motion is made.

CHAPTER V.

TO VACATE CHARTERS OF CORPORATIONS AND PREVENT USURPATION OF OFFICES.

SEC.
2651. Proceedings to vacate charters, (except municipal charters.) instituted either by the state or an individual,
2652. Solicitor directed to commence proceedings in certain cases; but any one may sue on giving security for costs.
2653. Such suits brought in the county of its principal business.
2654. Action in the name of the state, for usurping an office or franchise.
2655. Judge of the circuit may direct such a suit, or any one giving security for costs may begin it.
2656. Brought in the circuit court of the county where the acts are said to be committed.
2657. Informant joined as a plaintiff.
2658. On death of informant, any one may continue the action on giving security for costs.
2659. Action abates by death of all the informants.

SEC.
2660. Contents of the complaint in such suits.
2661. Names of the true officers stated in actions for usurpation.
2662. Judgment on defendant's right or in favor of party said to be entitled.
2663. If judgment is in favor of party said to be the true officer, he may demand the office.
2664. Validity of contested elections, not tried in this manner.
2665. Judgment of exclusion from the office or franchise.
2666. On judgment of forfeiture, the corporation is dissolved.
2667. Costs against the informant or state.
2668. Costs on abatement.
2669. Execution against informant and sureties for costs.
2670. Either party may appeal in ten days.
2671. 2672. If the state sues, judgment for defendant final. Tax fee of solicitor.

§ 2651. An action may be brought in the name of the state on the information of any person, for the purpose of vacating the charter, or annulling the existence of any corporation, other than municipal, whenever such corporation: Proceedings against corporations (except municipal) commenced by the state on information of a citizen to vacate charter, &c.

1. Offends against any of the acts creating, altering or renewing such corporation.

2. Violates the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers.

3. Whenever it has forfeited its privileges or franchises, by failure to exercise its powers.

4. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.

5. Whenever it exercises a franchise or privilege, not conferred on it by law.

Judge to direct solicitor to commence proceedings in certain cases.

§ 2652. The judge of the circuit, in which such corporation is located, whenever he has reason to believe that any of these acts or omissions can be proved, and it is necessary for the public good, must direct the solicitor of such circuit to bring such action; or such action may be brought on the information of any person, giving security for the costs of the action, to be approved by the clerk of the court in which the same is brought.

Any one may bring such suit on giving security for costs.

Such suits in the county of its principal office.

§ 2653. Such actions must be brought in the county in which such corporation has its principal office, or if it has no principal office, in any county in which it does business.

Action in the name of the state for usurping office or franchise.

§ 2654. An action may be brought in the name of the state against the party offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state.

On forfeiture of office.

2. When any public officer, civil or military, has done or suffered an act, by which, by law, he forfeits his office.

For acting as corporation without authority.

3. When any association or number of persons act within this state as a corporation, without being duly incorporated.

Judge of circuit court may direct such a suit or it may be brought by any one giving security for costs.

§ 2655. A judge of the circuit court may direct such action to be brought, whenever he believes these acts can be proved, and it is necessary for the public good; or it may be brought on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which such action is brought.

Where brought.

§ 2656. Such actions must be brought in the circuit court of the county in which the act or acts are done or suffered.

Informant must be joined as a plaintiff.

§ 2657. Whenever an action is brought under the provisions of this chapter, on the information of any person, the name of such person must be joined as plaintiff with the state.

On death of informant action may be continued by giving security.

§ 2658. Should such person die, pending such action, it may be continued in the name of the surviving informant, or in the name of any person, who on application is substituted in his place, having first given security for the costs.

Action abates on death of all informants.

§ 2659. On the death of all the informants, if no person is substituted in their place, the action abates.

Contents of complaint in such suits.

§ 2660. The complaint in any action brought under the provisions of this chapter, must concisely and clearly set forth the act or omission complained of.

In actions for usurpation name of the proper officer stated.

§ 2661. Whenever such action is brought against a person for usurping an office, in addition to the statement set forth in the complaint, the name of the person rightfully entitled to the office, with a statement of his right thereto, may be added.

Judgment on defendant's right.

§ 2662. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice requires.

If judgment is in favor of right of person alleged to be proper officer, he may demand the books, &c., and enter on the office.

§ 2663. If the judgment is rendered upon the right of the person so alleged to be entitled, and the same is in favor of such person, he is entitled, after taking the oath of office and executing such official bond as may be required, to take upon himself the execution of the office; and it is his duty, immediately thereafter, to demand of the defendant all the books, papers, and property in his custody, or within his power, belonging to the office; and on refusal, or neglect to deliver over the same, he may be proceeded against, as is prescribed by the provisions of Article sixth, Chapter first, Title five, in Part first of this code.

Validity of contested elections not tried in this manner.

§ 2664. The validity of any election, which may be contested under this code, cannot be tried under the provisions of this chapter.

Judgment against usurper of an office or franchise.

§ 2665. When a defendant, whether a natural person or a corporation, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding, or exercising any office, or franchise, judgment must be rendered, that such defendant be excluded from the office or franchise, and that the plaintiff recover costs against such defendant.

On judgment of forfeiture the corporation is dissolved.

§ 2666. If it be adjudged that a corporation against which an action has been brought, pursuant to this chapter, has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment must be rendered, that the corporation be excluded from such corporate rights, privileges or franchises, and be dissolved; and judgment for costs must be rendered against the persons claiming to be such corporation, and the directors or managers thereof as established by the testimony.

Costs against the informant or state.

§ 2667. If such action is at the suit of the state alone, and judgment is for the defendant, or the defendants are insolvent, the witnesses are paid as in other state cases; but if a person is joined with the state as informant, judgment must be rendered against him for the costs, if rendered for the defendant.

Costs on abatement.

§ 2668. On the abatement of the action, judgment is rendered against the securities of the informant for the costs.

Execution against informant and sureties for costs.

§ 2669. In all cases under this chapter, in which judgment is rendered against the informant for costs, execution may issue therefor against his securities.

Either party may appeal in ten days.

§ 2670. The informant, or defendant, may appeal to the supreme court within ten days after judgment, on application to the clerk and giving security for the costs of the appeal; the names of such securities to be certified with the record, to the supreme court; and if the appeal is not sustained, judgment for costs may be rendered against such securities.

If state sues, judgment for the defendant is final.

§ 2671. If the action is brought by the state alone, the judgment in favor of the defendant is final.

Tax fee of solicitor.

§ 2672. The solicitor, if judgment is rendered for the plaintiff, is entitled to a fee of twenty dollars.

CHAPTER VI.

MECHANICS' LIEN.

Sec.		Sec.	
2673.	Character of mechanics' lien, and conditions on which it vests.	2675.	Lien enforced in equity or by execution.
2674.	Lien accrues on estate of the party contracting, whether legal or equitable.	2676.	Lien lost if not enforced in ninety days.

Mechanics' lien for labor and materials in building.

§ 2673. Mechanics and builders have a prior lien upon the tract, parcel, or lot of land, on which buildings are erected by them, and on the building so erected, for the price agreed on, or compensation to be paid, and materials used in the construction thereof, unless surety be given to such builders for the performance of the contract, or an agreement be made in writing, waiving the lien. The lien is created upon the following conditions:

Contract to be written, signed and registered in probate court office.

1. The contract for the erection of the building must be in writing, and describe, with sufficient certainty to identify it, the tract, lot, or parcel of land, on which the building is to be erected; it must state the price or compensation to be paid, be signed by the parties, or their agents, and be registered in the office of the judge of probate of the county in which the lands lie, within sixty days after the date thereof.

Lien is subject to existing liens, &c.

2. The lien is subordinate to any existing mortgage, deed of trust, or other legal incumbrance, which, if required by law to be recorded, is registered according to law.

Lien discharged on security for the price, &c.

3. The owner of the land may at any time relieve the land from the lien, by giving the builder good and sufficient surety for the payment of the price, or compensation agreed on.

Change of contract does not impair the lien.

4. A change or modification of the contract does not affect the lien.

Effect of the lien as against the party to the contract.

§ 2674. The lien hereby created, is effectual against the title or estate of the party contracting for the erection of buildings on the lands, at the time the contract was made; whether it be a freehold or less estate, and whether the title be legal or equitable.

Lien enforced in equity or by execution after judgment obtained.

§ 2675. The lien may be enforced in equity; or if the builder obtain a judgment at law, he may, by execution, expose to sale the land and the buildings erected thereon, if the title is such as can be sold by execution at law, but is not to be precluded from levying his execution upon any other property of such contracting party.

Lien barred if not enforced in ninety days.

§ 2676. No lien under the provisions of this chapter can be enforced, unless proceedings to enforce the same in equity, or an action at law upon the contract, is commenced within ninety days after the completion of the work, or supply of materials.

CHAPTER VII.

PARTITION OF LANDS.

SEC.
2677. Partition made among joint tenants, &c., of full age, on petition to the judge of probate.
2678. Contents of such application.
2679. Publication then made by the judge; contents of the publication.
2680. If no objection is made, he appoints commissioners to make partition.
2681. Commissioners sworn, and then proceed to make the division.
2682. Publication of the time of making division.
2683. Partition made by lot, and result returned.
2684. Papers filed, and registered as conveyances.
SEC.
2685. Division so made, vests a title in each; set aside in chancery for fraud.
2686. Lien against one, attaches only to his share.
2687. New commissioners appointed, if necessary.
2688. Fee of judge of probate and commissioners.
2689. If costs not paid in thirty days, execution against each part owner for his proportion.
2690. No allotment made, if adverse claim is set up.
2691. Other remedies may be used, &c.

Partition of lands among joint tenants, &c., of full age on application to the judge of probate.

§ 2677. Lands held by joint tenants, or tenants in common, in fee, the parties interested therein, all being of full age, may be divided amongst them, on the application of the persons entitled thereto, or any one of them, in writing, to the judge of probate of the county in which the lands are situated.

Contents of the application.

§ 2678. The applicant must set forth the names of all the persons interested in the land, and their residence; a full and accurate description of the land to be divided, the interest of each person in the land, and the number of shares into which it is to be divided.

Publication then made by the judge.

§ 2679. The judge of probate must thereupon cause a publication to be made in some newspaper published in the county; and if there be none, then in the newspaper published nearest to the court house, setting forth the application to him, by whom made, a particular description of the land to be divided, the number of shares into which it is to be divided, and amongst whom; setting forth their names and places of abode; and that on a certain designated day, which must be at least sixty days from the date of the notice, he will appoint three persons, naming them, to make division of the land, which must be continued weekly until the appointment is made.

Contents of publication.

If no objection is made he appoints commissioners to make partition.

On cause shown other persons appointed.

§ 2680. At the appointed time, if no objection is made, he must by commission authorize the persons nominated to make division of the land, describing it particularly, the number of shares into which it is to be divided, and the names of the persons entitled thereto. If a valid objection be made to any of the nominees, their place must be supplied by suitable persons.

Commissioners sworn, and proceed to make the

§ 2681. The commissioners must be sworn faithfully to execute the trust reposed in them, and must, after examination of the land, and survey thereof if necessary, proceed

divisions into shares.

without delay to make division thereof into the necessary number of shares, having regard to the quality of the soil and other advantages, so as to make the different shares as nearly equal in value as practicable; making a plat and map thereof, showing the subdivisions and boundaries of the lots, and numbering them progressively, and are authorized to employ a surveyor, chain bearers, &c., if necessary.

Publication of the time of making the division.

§ 2682. They must cause publication to be made not less than three successive weeks in a newspaper published in the county, if there be one, if not, in the one nearest thereto, that they will, on a day designated, attend at the court house of the county to make division.

Division made by lot.

§ 2683. On the day designated the commissioners must, in the presence of the judge of probate, determine by lot to whom each of the several parcels belong, and make a statement in writing of the result, setting forth to whom the several parcels or lots were allotted, together with all the facts relating to the division and allotment, which must be signed by them, and attested by the probate judge.

Return of result, signed and attested.

Papers filed and registered as conveyances.

§ 2684. The petition, commission, statement of the commissioners, map and plat, and all orders made by the probate judge, must be filed in his office and registered in the book kept by him for the registry of conveyances of land, which is presumptive evidence of the truth of any fact therein stated.

Effect of division so made.

§ 2685. The division so made vests a title in fee simple in the persons to whom the several shares are allotted, in as full and ample a manner as if each had conveyed to the others; but if any fraud or undue influence be employed by any of the parties to obtain an unfair division or allotment, such division may be annulled on application to the chancellor, by bill in chancery, within five years after the allotment.

Set aside in chancery for fraud.

Lien against one party attaches only to his own share.

§ 2686. When there is a lien on an undivided interest of any of the parties, such lien, if a partition is made, is thenceforth a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

New commissioners appointed if necessary.

§ 2687. If any of the commissioners die, resign, or neglect or refuse to act, at any time before the final allotment, others may be substituted in their stead by the judge of the probate court, and have power to complete such division and allotment.

Fee of judge of probate and commissioners.

§ 2688. The judge of probate is entitled to two dollars per day for each day he is engaged in making such division, and to three dollars for making a record of the proceedings of the commissioners; the commissioners to two dollars per day for each day whilst engaged in such division and allotment, and all expenses they may be at in causing survey to be made, making map, plat, &c.

Execution against each part owner for his por-

§ 2689. The judge of probate must ascertain the costs and expenses attending the division, and make a record thereof, stating distinctly each item of costs and expense, and if the

same is not paid within thirty days after the allotment, he may issue execution against each of the persons to whom the land was allotted, for their aliquot proportion thereof, which must be directed to the sheriff, to be levied as other executions, and may be levied on the land so allotted. tion of the costs if not paid in thirty days.

§ 2690. No division or allotment can be made under this chapter, where an adverse claim or title is asserted by any one, or brought to the knowledge of the commissioners, or judge of probate. No allotment made if an adverse claim is made.

§ 2691. The power hereby conferred does not prevent a resort to any other legal mode of obtaining partition of lands. Other remedies may be used in such cases.

CHAPTER VIII.

PROCEEDINGS IN ADMIRALTY.

SEC.
2692. Liens on steam boats, &c., for materials and supplies.
2693. Complaint sworn to, and filed in the circuit court; its contents.
2694. Writ of seizure then issues.
2695. Boat released on bond stipulating to satisfy the judgment.
2696. Such proceedings not commenced for less than fifty dollars; creditors may unite.
2697. All claims to be consolidated, and one judgment rendered.
2698. When seizure is made twenty days before court, judgment rendered at the first term.
2699. Judgment against the parties to the bond, if one is filed, if not the boat is condemned, and plaintiff proves his claim by his affidavit.
2700. Costs taxed against complainant who fails.

SEC.
2701. No notice required when bond is filed; manner of giving notice when no bond is filed.
2702. Court orders sale of the boat, if seizure is made less than twenty days before court.
2703. Sheriff advertises and sells after sixty days, if no bond is filed.
2704. Custody of the boat by the sheriff, compensation for care of the boat.
2705. Any obligation to release the boat is a stipulation.
2706. Lien waived if not asserted in thirty days from maturity.
2707. Proceedings to enforce lien the same as in admiralty courts of the United States, unless otherwise provided.
2708. Damage for wantonly causing boat to be seized, &c.

§ 2692. A lien is hereby created on all ships, vessels, steamboats, and other registered, enrolled or licensed water-craft, built, repaired, fitted, furnished or victualled within this state, for all debts contracted by the master, owner or consignees thereof; for work done or materials supplied by any person within this state, for or concerning the building, repairing, fitting, furnishing, equipping, supplying or victualling, such ship, vessel, steam boat or other water-craft; and for the wages of the officers, laborers and crew, in preference to other debts due and owing from the owners thereof, which lien may be asserted in the manner following: Liens on steam boats, ships, &c., for materials, supplies, &c.

§ 2693. The person or persons claiming such lien may file their complaint in the circuit court of any county in which the boat or vessel may be found, or in the city court of Complaint, where filed; sworn to.

Contents.

Mobile, which must be sworn to, and must set forth the nature and amount of the debt or claim, and when due, and pray a seizure of the boat or vessel.

Writ of seizure then issues.

§ 2694. Thereupon the clerk of the court must issue a writ reciting the complaint, and commanding the sheriff to seize the boat or vessel, her tackle, apparel, and furniture, and hold her until released by due course of law.

Boat replevied by giving bond, &c.

§ 2695. The owner, master of the boat, or any third person, may release the boat from custody at any time before judgment, by entering into bond in double the amount of the claim or claims asserted against the boat or vessel, with sufficient surety, to be approved by the sheriff, payable to the complainant, with a stipulation to pay and satisfy the judgment which may be rendered in the premises: which bond must be returned to the court from which the process issued, by the sheriff, with his return indorsed thereon, and the boat or vessel be delivered to the stipulators.

Such proceedings not to be commenced for less than fifty dollars. Creditors may unite and make up that sum.

§ 2696. No proceeding can be instituted under this chapter, unless the debt or claim is fifty dollars or upwards; but any number of the persons entitled to a lien under the provisions of this chapter, may jointly unite in a complaint, if the aggregate of their claims amounts to or exceeds fifty dollars.

Any number may unite their claims in one complaint. All complaints consolidated and only one judgment rendered.

§ 2697. Any number of persons claiming as aforesaid may unite in the same complaint, and if more than one complaint be filed against the same boat or vessel, the court must order them to be consolidated, and render but one judgment, which must comprehend all the claims established against the boat or vessel, but which must be considered several as to each complainant.

If seizure is made twenty days before court judgment rendered first term.

§ 2698. If the boat or vessel is seized twenty days previous to the return term of the court, judgment may be rendered at the first term, unless good cause be shown for a continuance.

If stipulation be entered into judgment is rendered against the stipulator and his sureties, if not the boat is condemned Affidavit of complainant is evidence.

§ 2699. If a stipulation be entered into, the stipulators are defendants to the action; and if the claim be established, judgment must be rendered against them and their sureties. If there be no stipulation entered into, the court must proceed and render judgment ex parte, condemning the boat, its tackle, apparel, and furniture, to be sold for the satisfaction of the claim of the complainants; and the affidavit of the complainant is presumptive evidence of the justice of the demand.

If complainant fail costs taxed against him.

§ 2700. If any complainant fails to establish his claim, judgment must be rendered against him for the costs in relation thereto.

No monition required if a stipulation is entered into.

§ 2701. If a stipulation be entered into, no monition, or notice of the complaint and seizure is necessary. If no stipulation be entered into, within three days after the seizure of any boat or vessel, the sheriff must cause a notice of the seizure, stating at whose instance, and when made, to be posted up on the boat or vessel, and at the court house door of the county to which the process is returnable, which oper-

Manner of giving notice

ates as a monition, and is notice of the seizure and of the pendency of the litigation, to all persons; and his return thereof is evidence of the fact.

Boat sold if seizure is made less than twenty days before court by order of court.

§ 2702. If there be less than twenty days between the seizure and the return of the process, and no stipulation be entered into, the court must direct a sale of the boat or vessel, her tackle, apparel and furniture, for cash, which must be paid into court, and be held subject to its order.

Boat sold if seizure made sixty days before court and no stipulation is entered into.

§ 2703. If a seizure be made sixty days, or more, before the return of the writ, and no stipulation be entered into within five days thereafter, the sheriff must advertise and sell the boat, or vessel, her tackle, apparel, and furniture, for cash, in the same manner as upon a levy by fieri facias, and make return thereof to the next term of the court.

Compensation for custody of boat by the sheriff

§ 2704. Whilst the boat or vessel remains in the custody of the sheriff, he must, as far as practicable, secure it against loss or injury, and may employ a suitable person, or persons, to take charge thereof, and must therefor be allowed a suitable compensation, to be made by the court.

Any obligation entered into to release boat is in law a stipulation.

§ 2705. Any obligation or contract entered into for the purpose of releasing the boat or vessel from the custody of the sheriff, and in virtue of which the boat or vessel is restored to the master or owners, is in law a stipulation, whatever its form may be, and must charge the obligors or makers thereof, as stipulators.

Lien waived if not asserted in thirty days from maturity.

§ 2706. The lien hereby given, continues only thirty days after the maturity of the claim or debt, and if not asserted in the mode prescribed in this chapter within that time, must be held to have been waived or abandoned.

Proceedings as in admiralty courts of the United States, but issues of fact may be tried by jury.

§ 2707. Unless where otherwise provided in this chapter, the proceedings for the enforcement of the lien are the same as in the courts of admiralty of the United States; but either party may have any question of fact decided by a jury, upon an issue made up under the direction of the court.

Damage for abuse of the powers conferred by this chapter.

§ 2708. For any abuse of the power conferred by this chapter, by the seizure or sale of any boat or vessel, either when no debt or claim existed, or when the debt or claim was not a lien on the boat or vessel, the person or persons suing out such process are liable to the owners, by action on the case, for twice the amount of the damage actually sustained by the seizure, detention or sale of the boat or vessel.

CHAPTER IX.

ARBITRATION.

Sec.		Sec.	
2709.	Order of reference to arbitration made on motion of the parties to a suit.	2710.	Award made under a submission without order of the court, to be entered as a judgment.

SEC.
2711. Submission to be in writing, &c.; its contents.
2712. Proceedings before arbitrators and making of the award.
2713. Arbitrator not acting, his place supplied, and majority may make an award.
2714. If award is not performed, it is returned to the circuit clerk, and has the force of a judgment; if for less than fifty dollars, to a justice.
2715. Performance enforced by attachment.
2716. Oath of the arbitrators.
2717. They subpœna witnesses and issue commissions.
2718. Parties are competent witnesses before them.
2719. Subpœnas executed by sheriff or constable.
2720. Fine of defaulting witness.
2721. Award final, unless made through fraud.
2722. Arbitrations as at common law.
2723. Pay of arbitrators, witnesses, &c.
2724. Witness fees and other charges paid in advance, but successful party recovers them as costs.

Order of reference to arbitration made on motion of parties to a suit.

§ 2709. It is the duty of all courts to encourage the settlement of controversies pending before them, by a reference thereof to arbitrators chosen by the parties or their attorneys; and, on motion of the parties, must make such order and continue the cause for award; but such continuance must not extend beyond one term, unless for good cause shown, or by consent.

On reference to arbitration when no suit brought, award must be entered as a judgment.

§ 2710. When no suit is pending, the parties to any controversy may refer the determination thereof to the decision of arbitrators, to be chosen by themselves; and the award made pursuant to the provisions of this chapter, must be entered up as the judgment of the proper court, if the award is not performed.

Reference to be in writing, signed by the parties.

Contents of reference.

§ 2711. The parties must concisely state in writing, signed by them, the matter in dispute between them, and that they desire to leave the determination thereof to certain persons, naming them, as arbitrators; which must be delivered to the arbitrators, or one of them, together with a list of the witnesses either party may desire to examine.

Day for hearing fixed by arbitrators, and award made after examination of witnesses.

Award to be in writing.

§ 2712. Thereupon it is the duty of the arbitrators to appoint a time and place for hearing the parties and making their award, of which they must give the parties three days' notice; and if no cause is shown for a continuance, proceed to hear and determine the matters referred to them, and make their award in writing, which must be signed by them, and a copy thereof be delivered to each of the parties, their agents or attorneys.

If arbitrator does not act, another may be chosen by the parties or the arbitrators.

A majority may make an award.

§ 2713. If any of the arbitrators fail to attend at the time and place designated, and the parties appear, they may substitute others in their place. If the parties cannot agree, the arbitrators present may themselves appoint others in their stead, of which they must make a memorandum on the submission. A majority of the arbitrators chosen by the parties may make an award.

Award if not performed to be returned with the submission to circuit clerk, and has the force of a judgment.

§ 2714. If the award is not performed in ten days after notice, and delivery of a copy thereof, the successful party may return the submission and the award to the clerk of the circuit court of the county in which the award is made, if for the payment of more than fifty dollars, for the delivery of

specific property, or to do or omit to do any particular act. If for fifty dollars, or less, then to a justice of the peace of the county; and such award has the force and effect of a judgment at law, upon which execution may issue as in other cases. For less than fifty dollars, to a justice.

§ 2715. If the award be for the delivery of property, or to do or omit to do any particular act, on notice, and motion to the court, performance may be enforced by attachment, or other appropriate writ. Performance enforced by attachment if necessary.

§ 2716. Before making their award, the arbitrators must be sworn impartially to determine the matters submitted to them, according to the evidence, and the manifest justice and equity of the case, to the best of their judgment, without favor or affection; which oath they may administer to each other. Oath of the arbitrators.

§ 2717. The arbitrators, or either of them, have power to subpœna witnesses at the request of either of the parties, and to administer all oaths which may be necessary in the progress of the cause; and must, on the application of either party, issue commissions to take the depositions of any witness residing out of the county, which must be taken in the same manner as depositions in the circuit court, except that no oath of the materiality of the witness, or of the cause for taking the deposition is required. Arbitrators subpœna witnesses. Commissioners to take depositions.

§ 2718. The parties are competent witnesses, without regard to the amount, or matter in controversy. Parties competent witnesses.

§ 2719. Subpœnas for witnesses may be executed either by the sheriff, by any constable of the county, or by the parties themselves. Subpœnas executed by sheriff or constable.

§ 2720. Witnesses duly summoned, who fail to attend without sufficient excuse, may be fined ten dollars, for the use of the county; for the collection of which, the arbitrators must issue execution; such defaulting witnesses are also liable to the party summoning them, for any injury sustained by the loss of their testimony, to be recovered before any court having jurisdiction. Fine of defaulting witness.

§ 2721. An award made, substantially in compliance with the provisions of this chapter, is conclusive between the parties thereto, and their privies, as to the matters submitted, and cannot be enquired into or impeached for want of form or irregularity, if the award determines the matter, or controversy submitted; and is final, unless the arbitrators are guilty of fraud, partiality, or corruption, in making it. Award is final unless arbitrators are guilty of fraud, &c., in making it.

§ 2722. Nothing in this chapter contained, prevents any person or persons from settling any matters or controversy, by a reference to arbitration, at common law. Arbitration as at common law,

§ 2723. The arbitrators are, if demanded by them, entitled each to two dollars per day, whilst actually engaged in the arbitration; the witnesses, to one dollar per day; and the sheriff and constable, to the customary fees for executing subpœnas, which must be paid jointly by the parties, unless the authorities otherwise determine. Pay of arbitrators, witnesses, sheriffs, &c.

Fees of witness to be paid in advance, also all other charges.

Party paying them may recover from the one liable

§ 2724. Any witness may refuse to testify until his fees are paid by the party summoning him; and the arbitrators may refuse to deliver copies of the award until all charges are paid. If paid by a party not liable therefor, he may recover the same by action before any court having jurisdiction thereof; and the receipt of the arbitrators is presumptive evidence of the fact of payment, and of the liability of the party therefor.

CHAPTER X.

TO APPOINT AND REMOVE TRUSTEES.

SEC.	
2725.	Circuit court may remove a trustee; causes for such removal.
2726.	Application filed with the clerk of the county in which the trustee resides.
2727.	Its contents; notice to trustee.
2728.	Publication when trustee is a non-resident.
2729.	Also if he is absent.
2730.	Tried as other cases in the circuit court.
2731.	Court instead of removing, may require bond.
2732.	New trustee appointed, and bond required.
2733.	Costs.

Circuit court may remove a trustee.

Causes of removal.

§ 2725. The circuit court has the power to remove the trustee of an express trust, created by will or deed, upon the application of any party interested in the trust property, when such trustee has violated, or threatened to violate his trust, is insolvent, or has removed from the state.

Application; where filed.

§ 2726. Such application must be filed with the clerk of the county in which the trustee resides; and if a non-resident, in the county in which the most valuable portion of the trust property is.

Its contents.

Notice to trustee.

§ 2727. It must state the grounds on which the removal is sought; and the trustee must be served with a copy of such application ten days before the same is tried.

Publication if a non-resident.

§ 2728. If the trustee is a non-resident, notice must be given, by publication in such paper as the clerk may direct, for four successive weeks before the trial.

Publication if trustee is absent.

§ 2729. If the trustee is a resident, but absent from the state, the court, on proof thereof, may direct notice to be given, by publication in some paper for four successive weeks, and to be left at his last place of residence or business.

Tried as other cases in the circuit court.

§ 2730. The application must be heard on evidence, and the facts determined as in other cases in the circuit court.

Court may require bond instead of removing trustee.

§ 2731. The court may, on the trial, instead of removing the trustee, require of him such bond as will effectually protect the interest of the parties; which bond must be approved by the judge.

New trustee appointed and bond regiven.

§ 2732. If the trustee is removed, a new trustee may be appointed, and such bond required of him as is necessary to protect the interest of the parties in the trust property.

§ 2733. Costs, or any portion of the same, may be given against the applicant, or the other party, in the discretion of the court. Costs.

CHAPTER XI.

PRISON BOUNDS AND INSOLVENT DEBTORS.

ARTICLE 1. Prison bounds.
" 2. Insolvent debtors.

ARTICLE I.

Prison bounds.

SEC.
2734. Prison bounds defined; privilege of prison bounds on giving bond, &c.
2735. Bond is taken by the sheriff.
2736. Party imprisoned for non-payment of fine or for contempt of court, allowed the benefit.
2737. Judgment on the bond for breach of the condition.
2738. Creditor not liable for support of the prisoner in bounds.
2739. Prisoners under justice's process entitled to the privilege.
2740. Privilege continues only for sixty days.

§ 2734. The boundary of the county is the limit of the prison bounds; and any person imprisoned in a civil action, may have the benefit thereof upon entering into bond, payable to the creditor, with sufficient surety, in double the amount of the judgment or debt for which he was imprisoned, with condition to continue a true prisoner within the prison bounds, as by law established, until he is thence discharged by due course of law, without committing any escape in the meantime. Prison bounds; their limits. Benefit of the prison bounds may be obtained by giving bond.

§ 2735. The bond must be taken and approved by the sheriff, and be filed by him within five days thereafter, in the office of the clerk of the court from which the execution issued. Bond taken by the sheriff

§ 2736. Any person imprisoned for the non-payment of the fine and costs, under the provisions of section 3625, or for the non-payment of a fine imposed for contempt, after the specific term of his imprisonment, may have the benefit of the prison bounds, the bond in such case being payable to the state of Alabama. Party imprisoned for non-payment of a fine for contempt allowed the benefit

§ 2737. If the debtor is guilty of an escape, by passing beyond the prison bounds, after the execution of such bond, and without payment of the judgment, debt, or fine, interest and costs, the obligee in such bond, his executor or administrator, may have judgment for the same by motion to the circuit court, against such of the obligors in the bond as have five days' notice in writing that such motion will be made; and either party may have the fact of the escape tried by a jury. Judgment on the bond for breach of its condition. Five days' notice to the parties.

Creditor not liable for support of prisoner in bounds.

§ 2738. The creditor is not liable for the sustenance or support of the prisoner after his discharge from close custody, under the provisions of this chapter.

Prisoners under process from justices entitled to the prison bounds.

§ 2739. The provisions of this chapter apply to imprisonment under process from justices of the peace. In such cases the bond for the prison bounds must be taken by the sheriff, and filed in the office of the clerk of the circuit court of his proper county.

Privilege of prison bounds lasts only sixty days.

§ 2740. No person is entitled to the benefit of the prison bounds for a longer term than sixty days, and failing to surrender himself to the jailor after that time, must be deemed to have committed an escape.

ARTICLE II.

Insolvent debtors.

SEC.
2741. How discharged from arrest under execution.
2742. Notice of application for discharge given plaintiffs.
2743. And to solicitor on the part of the state.
2744. Proceeds of sale of property embraced in the schedule divided equally among the creditors.
2745. Property acquired after discharge liable, but debtor not imprisoned a second time.
2746. Return of the schedule by the sheriff.
2747. Notice to debtors on insolvent's schedule to answer as to their indebtedness.
2748. Proceedings to compel payment, &c.
2749. Discharge on denial of indebtedness.

Insolvent debtors, how discharged.

§ 2741. Any person imprisoned in virtue of a judgment rendered in any civil action, or for failing to pay any fine and costs legally imposed, after the specified term of his imprisonment for the non-payment of such fine and costs, must be released from custody by making the schedule, and giving the notice provided in sections 2182 and 2183; and the same proceedings must be had as therein provided for the discharge of the prisoner, and for the sale of the property rendered in the schedule.

Notice of application for discharge to the plaintiff.

§ 2742. When the party is imprisoned at the suit of several persons, notice must be given to each of the plaintiffs, or their agents or attorneys, if resident in the county, of the intended application.

Notice to the solicitor for the state.

§ 2743. Where the state is the plaintiff, the notice must be given to the solicitor of the circuit, or the judge of probate of the county in which the person is imprisoned.

Proceeds of sale divided equally among the creditors.

§ 2744. After the payment of the sheriff's and jail fees, the proceeds of the sale of the effects of the debtor, rendered in his schedule, must be divided rateably amongst the plaintiffs by whom he was charged in execution, if there be more than one.

After acquired property liable.

§ 2745. Any property acquired by such debtor after his discharge, is liable for the payment of such judgments, but

the debtor must not be imprisoned again for or on account of the judgment on which he was imprisoned at the time of his discharge. Debtor not to be imprisoned again.

§ 2746. The sheriff must return the schedule rendered by the defendant, and make return of the sale of the debtor's effects to the clerk of the circuit court of his county, with the amount due to each of the plaintiffs, if more than one, at whose suit the debtor was imprisoned, which it is the duty of the clerk to credit on the entry made of the issue of the execution. Return of the schedule by the sheriff.

§ 2747. When an insolvent debtor is discharged, upon rendering a schedule of his property, and returns in such schedule, debts, money, or property, due to or belonging to him, in the hands of another person, it is the duty of the clerk of the circuit court on the return of the schedule by the sheriff, upon the application of the plaintiff, to issue a notice to such person, describing the debt, money, or property alleged to be due from him to the debtor, or to be in his hands, and requiring him to appear at the next term of the court, and answer upon oath as to the correctness thereof. Notice to debtors on insolvent schedule to answer at next court.

§ 2748. If he appear and admit indebtedness to the debtor or property of the debtor in his hands, judgment must be rendered against him for the amount so admitted, or of condemnation of any chattel admitted to be in his hands, as in case of garnishee in attachment. And in like manner if he fail after notice to appear and answer, judgment must be rendered against him on the schedule, to be made absolute if after notice thereof he fails to appear and answer. Proceedings in such cases.

§ 2749. If he deny indebtedness to the debtor, or property in his hands belonging to him, he must be discharged at the cost of the plaintiff, but no attorney's fee must be taxed. If a conditional judgment is set aside on his answer, he must pay the cost. Discharged on denial of indebtedness

CHAPTER XII.

INQUISITIONS OF LUNACY.

SEC.
2750. On application, with affidavit of facts, judge of probate to fix a day to examine into matter of lunacy or idiocy.
2751. Writ of arrest of lunatic, and commanding a jury to try the lunacy, &c.
2752. Oath of the jurors; vacancies on the list filled.
2753. On verdict of insanity, &c., papers filed and a guardian appointed.
2754. Rights of the guardian, his duties.
2755. Provision for support of ward's family, &c.
2756. Settlements by guardian, his duties and responsibility the same as those of other guardians.
SEC.
2757. On restoration of mind, the guardian is discharged on his petition.
2758. Ward's petition, certified by physicians, to be heard by judge of probate.
2759. If petition proved, order made discharging the guardian.
2760. If his restoration is disputed, a jury tries the fact.
2761. Judgment when the verdict sustains the petition.
2762. Pauper lunatics supported by the overseers of the poor.
2763. Fees of judge, sheriff, jurors and witnesses.

Petition to judge of probate to examine into the lunacy, &c. of a resident of his county; affidavit of the facts.

§ 2750. Upon the petition of any of the relations or friends of any person alleged to be an idiot, lunatic, or person non compos mentis, setting forth the facts and name, sex, age, and residence, of such alleged idiot or lunatic, accompanied by an affidavit that the petitioner believes the facts therein stated to be true, the judge of probate of the county in which such alleged lunatic, idiot, or person non compos mentis resides, must appoint a day not more than ten days from the presentment of such petition, for the hearing thereof.

Writ directs the summoning of a jury, and the arrest of the alleged lunatic.

§ 2751. He must also issue a writ directed to the sheriff, commanding him to summon twelve disinterested persons of the neighborhood for the trial thereof, and also issue subpœnas for witnesses as the parties may require, returnable to the time of trial; he must also issue a writ directed to the sheriff, to take the alleged insane person or idiot, and if consistent with his health or safety, have him present at the place of trial.

Oath of the jurors.

§ 2752. At the time set forth in the trial, if good cause be not shown for a continuance, the jury must be empannelled, and sworn well and truly to make inquisition of the facts alleged in the petition, and a true verdict render according to the evidence. If any of the jurors are excused from serving, fail to attend, or are set aside from any cause, their places may be supplied by the by-standers.

On verdict of insanity, &c., papers to be filed and a guardian appointed.

§ 2753. If the jury find by their verdict that the facts alleged in the petition are true, and that such person is an idiot, lunatic, or non compos mentis, the court must cause the petition, and all the proceedings thereon, to be recorded, and appoint a suitable person guardian to such idiot, lunatic, or non compos mentis, requiring him to execute bond as other guardians.

Rights and duties of the guardian.

§ 2754. The guardian so appointed is entitled to the custody and control of the person and estate of such idiot, lunatic, or non compos mentis; and it is his duty to provide for his wants, and, by a keeper or otherwise, to exercise such a supervision over him as to prevent injury to other persons.

Provision for support of ward's family.

§ 2755. If the ward has a family, the judge of probate must direct what portion of the estate or its income must be appropriated by the guardian for their support.

Settlements by guardian; his duties the same as those of other guardians.

§ 2756. Such guardian must be required to settle annually, or oftener if necessary; may be required to give additional surety when necessary; may be removed for sufficient cause, as other guardians, and is in all respects subject to the provisions made for ordinary guardians.

On restoration of the mind the guardian to be discharged.

§ 2757. If at any time after his appointment the guardian becomes satisfied that his ward has been restored to sanity, and is capable of managing his estate, and the judge of probate is of opinion from the proof and the facts stated, that such representation is correct, he must make an order that the guardian be discharged, and that the estate of the ward be restored to him.

§ 2758. At any time after the finding of the verdict against

the alleged insane person, he may in person, or by his next friend, petition the judge of probate, alleging his restoration to sanity, which must be certified by two physicians, or other competent persons; thereupon the judge of probate must appoint a day, not more than ten days thereafter, for hearing the same, to which day the guardian must be cited to appear and show cause against it.

Petition of ward on the ground of restoration certified by physicians to be heard by judge of probate.

§ 2759. If the guardian fail to appear and the judge of probate is satisfied the allegations of the petition are true, he must make an order declaring the fact, that the authority of the guardian has ceased, and that the ward is entitled to the custody and management of his estate.

Order of discharge of guardian if petition proved, &c.

§ 2760. If the guardian appear and contest the allegation of the petition, a day must be fixed for the trial thereof, to which time a jury must be summoned, and the same proceedings be had as upon the original inquisition.

Jury tries the issue if his restoration is disputed.

§ 2761 If the jury find the facts alleged in the petition to be true, judgment must be rendered that the petitioner be restored to the possession of his estate; from and after which time the authority of the guardian over the estate and person of the ward ceases. The guardian may be taxed with the costs, at the discretion of the judge of probate, for which execution may issue. If otherwise, the petition to be dismissed at the costs of the petitioner.

Judgment when the verdict sustains the petition.

§ 2762 If such idiot, or insane person, have no estate, or no person is willing to become his guardian, the judge of probate must place him in charge of the overseer of the poor, who must provide for his safe keeping and sustenance, and may call on his relations to aid in his support, under the provisions of section 1212.

Support of pauper lunatic provided by overseer of the poor.

§ 2763. Upon any proceeding had under the provisions of this chapter, the sheriff and judge of probate are entitled to such fees as are allowed by law for similar services in other cases; and the jury and witnesses, to seventy-five cents per day during their detention, which, unless otherwise provided in this chapter, must be paid out of the estate of the lunatic or idiot, on the certificate of the judge of probate. If he have no estate, the same must be paid out of the county treasury.

Fees of judge, sheriff, jurors and witnesses.

By whom paid.

Title 3.

PROCEEDINGS IN CIVIL CASES BEFORE JUSTICES OF THE PEACE.

CHAP. 1. Powers and duties of justices of the peace and constables.
" 2. Special proceedings before justices of the peace.

CHAPTER I.

POWERS AND DUTIES OF JUSTICES OF THE PEACE AND CONSTABLES.

SEC.
2764. Justices to fix a day and place at least once a month to try civil cases.
2765. Beneficial party to sue in their courts.
2766. Suits commenced by summons and cause of action indorsed; form of summons.
2767. Summons to be executed three days before return day.
2768. Suits brought either in precinct of defendant's residence or where the cause of action arose.
2769. If there are several defendants, suit brought in either precinct.
2770. Suits may be brought in other precincts in certain cases.
2771. Bail regulated by same provisions as in other suits.
2772. And defendant discharged in the same manner.
2773. Deposition of witnesses taken in certain cases.
2774. Subpœnas issued by justices.
2775. Served within another county if within ten miles.
2776. Conditional judgment against defaulting witnesses. Excuses when heard.
2777. Execution when judgment made absolute, and paid to county treasury when collected.
2778. Witnesses' fees.
2779. Parties competent when sum is less than twenty dollars. Either may examine the other.
2780. Rules of evidence, those of other courts.
2781. Judgment at first return day.
2782. Judgments in actions to recover specific property.
2783. If no appeal in five days execution issues returnable in twenty days,
2784. Form of execution.
2785. On affidavit of necessity, execution issues immediately.
2786. Set-off in such suits.
2787. If the off-set exceeds fifty dollars.
2788. Stay of execution on giving security.
2789. Ca. sa. when issued; discharge from arrest as in other executions.
SEC.
2790. A judgment of a justice bars another suit.
2791. Statement (certified) of the judgment, evidence of the fact, &c.
2792. On death of a justice (or other vacancy) unfinished business completed by the other justice of the precinct.
2793. The constable is the officer of the court.
2794. Property levied on, except slaves, to be sold within the precinct.
2795. Slaves not to be levied on if other property can be found; sales of slaves to be made at the court-house.
2796. Levy made on land, if no personal property found.
2797. Notice to be given of levy on land.
2798. Motion made in circuit court for order of sale.
2799. Proceedings before justice, and order of sale, to be recorded by the clerk.
2800. Forthcoming bonds.
2801. On forfeiture of bond, execution issues.
2802. Return of forfeiture of a bond taken on an execution from another county.
2803. Defects in form of such bonds not to alter their legal effect.
2804. Executions sent to other counties to be certified by judge of probate.
2805. Return of such executions.
2806. Lien of such executions.
2807. First execution received to be first paid.
2808. Property exempt from levy and sale under process from a justice.
2809. Indemnifying bonds required in cases of doubt.
2810. Liability of the constable and the sureties on his official bond.
2811. Appeals to the circuit court in five days.
2812. Papers in the case and statement of the judgment returned to the court in such cases.
2813. Witnesses, how subpœned on trial of the appeal.

SEC.
2814. Notice of the appeal served on the appellee.
2815. If execution issues in six months, others may issue within three years.
2816. If none were issued, notice to be given the defendant to show cause why execution should not issue.
2817. Effect on the suit, if death of either party.
2818. Judgment against executors and administrators suspended for eighteen months.
2819. Limitation of suits, and rules of proceedings in the circuit court applicable to suits in the justices' courts.

A day to be fixed by the justices to try civil cases at least once a month

§ 2764. Justices of the peace must designate certain days, at least once a month, and appoint a particular place within their precincts, for the trial of civil causes, but may in cases of emergency make their process returnable at any other time or place.

Actions before them brought by the party really interested.

§ 2765. All actions brought before justices of the peace, founded on any contract, express or implied, must be brought in the name of the party really interested therein, whether he have the legal title or not; and all actions for the recovery of specific property, or for the recovery of damages merely, in the name of the aggrieved party.

Suits commenced by summons and cause of action indorsed.

§ 2766. Civil suits before a justice of the peace must be commenced by a summons, to be issued by them, with the cause of action indorsed thereon, in substance as follows:

Form of summons.

The State of Alabama, }
County. } To any constable of the county of —.

Summon A. B., to appear befor me on the —— day of —— next, at (designating the place,) to answer the complaint of C. D., and then and there make return of this summons.

Issued the —— day of ——

E. F., justice of the peace.

To be executed three days before return day.

§ 2767. The summons must be executed three days before the return day thereof, by personal service on the defendant.

Suits brought in precinct of defendant's residence, or where cause of action arose.

§ 2768. Unless in cases otherwise provided for in this title, no person can be sued out of the precinct of his permanent residence, or of that in which the debt was created, or cause of action arose, and if suit be brought contrary to the provisions of this section, it must on motion be dismissed by the justice.

If several defendants, suit in either precinct.

§ 2769. Where there are several defendants, the summons may be made returnable into any precinct where any one of them resides.

If there is no justice in the precinct, or if justice is incompetent, suit brought in the next precinct.

§ 2770. If there is no justice within the precinct of the defendants' residence, or if the justice is from any cause incompetent to sit upon the trial, the summons must be issued and the cause tried by the justice of any adjoining precinct competent to try the cause.

Bail in suits before justices.

§ 2771. If the plaintiff desires to hold the defendant to bail, the same proceedings must be had, in all respects, as provided in Chapter fourth, Title first, of Part third, for arrest and bail in cases returnable to the circuit court; and upon oath being made and security given, as there required, the justice must indorse on the summons, that bail is required in double the sum sworn to be due.

Defendant discharged in the same manner as when held to bail in other suits.

§ 2772. Where the defendant is arrested on a bail summons, he must be discharged from custody, upon his giving bail or tendering to the justice a schedule of his property, in the mode prescribed in the chapter referred to in the preceding section; and all the provisions therein made for the discharge of the defendants, and for fixing the liability, and for the discharge of the bail, are applicable where bail is required in justice's court.

Depositions of witnesses in suits before justices.

§ 2773. The depositions of females, aged, sick and infirm persons, and non-residents of the county, living ten miles from the place of trial, may be taken on application to the justice, in the same manner depositions are taken in the circuit courts; in all other cases, witnesses must be examined orally before the justice.

Subpœnas.

§ 2774. The justice, on the application of either party, must issue subpœnas for witnesses, stating therein the name of the parties by whom the witness is summoned, and the time and place of trial; which must be executed by the constable, in the same manner as the summons.

Served in another county if within ten miles.

§ 2775. Where the witness is not a resident of the county, but resides within ten miles of the place of trial, computing the distance by the usual travelled route, the subpœna may be served either by a constable of the county in which it was issued, or by one in which the witness resides; but in the latter case, a justice of such county must certify that he is an acting constable thereof.

Conditional fine of defaulting witnesses.

§ 2776. If any witness duly summoned fails to attend, a conditional fine of ten dollars may be entered against him by the justice; which must be made absolute if the witness, upon notice issued by the justice, and served three days previous to the trial, fails to make a sufficient excuse, either in person, by some one who knows the facts constituting the excuse, or by affidavit before some justice of the peace, and presented at the time designated for the trial thereof.

Excuses.

Execution if judgment made absolute, and fine paid into county treasury.

§ 2777. If the fine is made absolute, execution must issue therefor, and the proceeds, when collected, must be paid to the county treasurer. He may also be compelled, by attachment, to appear and give evidence; and is also liable to the party summoning him, for any injury caused by the want of his testimony.

Witnesses' fees.

§ 2778. Witnesses are entitled to fifty cents per day, while in attendance on the trial, to be taxed in the bill of costs.

When the sum in dispute is less than twenty dollars, either party is a competent witness.

§ 2779. Where the matter in controversy, or damages claimed by the complaint, do not exceed twenty dollars, either party may be a witness in his own behalf. When the matter in controversy, or damages claimed, exceed twenty dollars, either party may be a witness in his own behalf, unless the party against whom the testimony is offered, swears that the testimony proposed to be given is untrue; but, in any case, either party may be compelled to testify at the instance of his adversary; and if he declines to do so, judgment must be rendered against him.

Either may require the other to testify. Penalty for refusal.

§ 2780. The rules in relation to the competency of witnesses, are the same on trials before justices, as declared by the provisions of Article one, Chapter ten, Title one, of this part, except so far as the same may be altered by the provisions of this title. Rules of evidence same as in other suits.

§ 2781. The justice must proceed to render judgment at the return term of the summons, unless cause be shown for a continuance. Judgment at return term.

§ 2782. In actions for the recovery of specific property, the justice must ascertain the value thereof, and render judgment for the specific property, if to be had; if not, then for its value; and execution must issue accordingly. Judgments in actions for specific property.

§ 2783. After the lapse of five days, if an appeal is not taken, he must, unless otherwise directed, issue a writ of fieri facias for the satisfaction of the judgment, which must be signed by him, be dated on the day it is issued, and be returnable, not less than twenty, nor more than thirty days after its issue, except in such cases as is otherwise provided. If no appeal, execution issues in five days, returnable in twenty days.

§ 2784. The writ must be in substance as follows:

State of Alabama. }
County. } To any constable of the County of ——: You are hereby commanded, of goods and chattels of A. B., you make the sum of —— dollars, which C. D. recovered before me, of him, on the —— day of ——, besides ——, his costs; andmake return to me, on the —— day of —— next, at — in your county, how you have executed this writ. Form of execution.

Witness my hand this —— day of ——.

E. F., justice of the peace.

§ 2785. If the plaintiff, his agent or attorney, make oath in writing before the justice, that the plaintiff is in danger of losing the fruit of his judgment by delay, the justice must issue execution thereon immediately. On affidavit execution issues immediately.

§ 2786. The defendant may set off any claim or demand, founded on a contract, express or implied, he held against the plaintiff at the time the suit was instituted, whether the same was liquidated or not; and if his claim is greater than that of the plaintiff, may have judgment for the residue, if it does not exceed fifty dollars. Set-off in such suits.

§ 2787. If such residue exceeds fifty dollars, and the defendant enters on the docket of the justice a satisfaction of as much of his claim as the amount of the plaintiff's demand, as ascertained by the justice, and tenders the plaintiff a receipt for the amount thus set off, judgment must be rendered in favor of the defendant for costs. If the off-set exceeds fifty dollars, after absorbing plaintiff's demand.

§ 2788. The defendant may at any time before execution issued, stay the issue thereof for thirty days, if the judgment is for less than twenty dollars, and for sixty days, if over twenty dollars, by executing in writing an undertaking to the plaintiff in double the amount of the judgment, with surety, to be approved by the justice, to pay the judgment at the expiration of the stay. If not paid, execution may issue therefor against all the parties to such undertaking. Stay of execution on giving security for the debt.

§ 2789. A capias ad satisfaciendum may be issued by a Ca. sa.

justice of the peace upon the terms and conditions prescribed in section 2175; and the defendant, when arrested, may be discharged from custody, in the same manner as is provided for the discharge of bail in civil cases, in Chapter four, Title one, of Part third.

How discharged from custody.

Justice's judgment is a bar to other actions.

§ 2790. A judgment rendered by a justice of the peace on the merits of the case, is a bar to any other suit for the same cause of action.

Statement of the judgment is evidence of the fact.

§ 2791. A statement of the judgment rendered by a justice of the peace, made and certified by the justice before whom the cause was tried, or by his successor, in possession of his docket, is presumptive evidence of the fact.

Completion of unfinished business on death of a justice.

§ 2792. When a justice of the peace dies, resigns, or removes, the remaining justice of the precinct is authorized to complete the unfinished business, in the same manner as if it had been commenced before him. If there be no other justice in the precinct, then the nearest justice to his place of residence.

Constable attends on the court.

§ 2793. It is the duty of the constable to attend the regular terms of the justice's court of his precinct.

Property levied on (except slaves,) to be sold within the precinct.

§ 2794. He must sell all property levied on, except slaves, at the residence of the defendant, or at such other place within the precinct as may be most for the benefit of the parties, between the hours of eleven in the morning and four in the afternoon.

Slaves not levied on if other property can be found.

§ 2795. He must not levy on slaves unless there is not a sufficiency of other personal property of the defendant known to him to satisfy the execution. When a levy is made on slaves, he must advertise the sale at some public place within the precinct, and also at the court house of the county, by putting up a written notice at each, ten days previous to the sale. Sales of slaves, by constables, must be made at the court house of the county, on the first Monday of the month.

Sale of slaves made at the court house.

Levy on land if no personal property is found; papers then returned to circuit court.

§ 2796. If the defendant has no personal property known to the constable, or if it is insufficient to satisfy the execution, he must indorse the fact upon the execution, and may then levy on land of the defendant, describing it in his levy, and make return thereof to the justice of the peace, whose duty it is to transmit all the papers in the cause to the next circuit court.

Notice of levy on land.

§ 2797. If the defendant, whose land is levied on, is a resident of, and within the county, personal notice of such levy must be given him; otherwise, by posting a notice in a conspicuous place on the land levied on.

Motion for order of sale.

§ 2798. If the proceedings before the justice are regular, and establish a judgment against the defendant, issue of execution, and levy on land for want of personal property, and notice thereof, and no sufficient objection is made, the court must, on motion of the plaintiff, direct a sale of the land for the satisfaction of the judgment.

§ 2799. The clerk of the circuit court must record all the

proceedings before the justice, together with the return of the constable, the motion of the plaintiff, and the order of the court thereon; and issue a writ directing the sheriff to sell the land for the satisfaction of the judgment. Proceedings before justice and order of sale to be recorded by the clerk.

§ 2800. When a levy is made on personal property, the defendant may retain the possession thereof until the day of sale, by executing a forthcoming bond, payable to the plaintiff, in double the amount of the judgment, with sufficient surety, to be approved by the constable, with condition to have the property forthcoming at twelve o'clock of the day, and at the place appointed for the sale. Forthcoming bond.

§ 2801. If the property is not delivered at such time and place, the constable must return the bond forfeited to the justice, who must thereupon, without delay, issue execution thereon for the amount of the judgment and costs, against all the parties thereto, upon which no further stay of execution must be taken. On forfeiture of bond execution to issue. No stay allowed on such execution.

§ 2802. If property is levied on by a constable under an execution from another county, and the property is not delivered on the day of sale according to the forthcoming bond, the constable must return the bond "forfeited" to any justice of his county, together with a copy of the execution, who must proceed thereon in the same manner as if judgment had been rendered by him; and the constable must then return the execution to the justice that issued it, with an indorsement, showing the levy and forfeiture of the bond. Return of forfeiture of bond taken on an execution from another county.

§ 2803. Any undertaking entered into by the parties, with the consent of the justice or constable, as a stay of execution, or forthcoming bond, and which has the effect to stay execution, or continue the property levied on in the possession of the defendant, must be deemed sufficient, though defective in form. Defects in form of the bond not to alter its legal effect.

§ 2804. Where a defendant against whom judgment has been rendered removes to another county, the justice may issue execution thereon, directed to any constable of such county; which execution must be certified by the judge of probate of the county in which such justice resides, or by a justice of the county to which it is sent, who has knowledge of the hand-writing of the justice issuing it. Execution sent to another county to be certified by judge of probate.

§ 2805. The execution must be made returnable before the justice issuing it, not less than thirty, nor more than sixty days from the time of its issue; and may be executed by any constable of the county to which it is sent, and must be by him returned to the justice by whom issued. Return of such executions.

§ 2806. Executions issued by justices, are a lien on the real and personal property of the defendant, from the time of the levy, and upon the property on which they are levied. Lien of such executions.

§ 2807. If more than one execution comes to the hands of the constable against the same defendant at different times, the first received by him must be first satisfied. If more than one execution against the same defendant come to his hands at the same time, if all cannot be satisfied, each must Order of payment of executions against the same defendant.

receive a rateable proportion: and it is the duty of the constable to indorse on every execution received by him, the true date of the receipt thereof.

Property exempt from levy on such executions.

§ 2808. The same property is exempt from any levy, attachment, or sale by execution, from a justice, as provided in the fifth Article of the nineteenth Chapter, Title first, Part third: and the same property subject to levy and sale by execution from a justice, as declared by the provisions of section 2455.

Indemnity bond required in cases of doubt.

§ 2809. When a reasonable doubt exists as to the title of the defendant to property, the constable may refuse to levy, unless indemnified by the plaintiff. If there are more plaintiffs than one, those having the oldest lien have the prior right to give such indemnity, and upon his refusal, the person having the next oldest lien may give the indemnity, and have the property sold or attached for his benefit.

Liability of the constable and his sureties.

§ 2810. The constable, and sureties on his bond, are responsible for moneys received by him, in virtue of his office, upon any summons, attachment, or execution, issued by a justice, whether the same is received before or after judgment, or before or after the return day of the execution.

Appeals in five days to circuit court.

Appeal bond.

§ 2811. Any person may appeal to the circuit court, from any judgment rendered against him by a justice, within five days after the rendition thereof, by entering into an undertaking in writing, in double the amount of the judgment, payable to the person in whose favor the judgment is rendered, to satisfy such judgment as may be rendered in the premises, by the circuit court.

Papers and statement of the judgment to be returned to the court.

§ 2812. When an appeal is taken, the justice must return all the original papers of the cause, together with a statement signed by him of the case, and the judgment rendered by him, to the clerk of the circuit court, by the first day of the term.

Subpœnas to witnesses on the appeal trial issued by justice and served by constable.

§ 2813. He must also issue such subpœnas as either party may require, for witnesses, to attend on the third day of the next term of the circuit court, stating therein at whose instance such witness is summoned, which must be executed by the constable, and returned on or before the second day of the term, to the clerk of the circuit court.

Notice of the appeal to be served on the appellee.

§ 2814. The justice must also issue a notice to the appellee, that such appeal has been taken, which must be executed by personal service, five days before the return term of the appeal, and must be returned by the constable to the clerk of the circuit court, on or before the second day of the term.

If execution issues within six months others may issue at any time for three years.

§ 2815. When an execution has issued within six months after the rendition of judgment, and has not been returned "satisfied," another execution may be issued thereon at any time within three years thereafter, without a revival of the judgment.

If none were issued notice to the defen-

§ 2816. When execution has not been thus sued out, no execution can issue until the defendant is notified to appear, at a time and place designated by the justice, and show cause

why the plaintiff should not have execution of his judgment; but no judgment can be revived after the lapse of five years from the rendition of judgment, or of the issue of the last execution.

dant to show cause why one should not issue.

§ 2817. When any of the parties to a suit die during its progress, the suit abates, unless the cause of action survives; when it may be revived within six months thereafter, by five days' notice to the legal representative, to appear, and prosecute or defend the suit; unless such legal representative voluntarily makes himself a party; and upon the death of either party being made known to the justice, he must continue the cause six months.

Effect of death of either party pending the suit.

§ 2818. No judgment must be rendered by a justice of the peace against an executor or administrator, as such, until eighteen months after the grant of letters testamentary, or of administration.

No judgment against executors and administrators till eighteen months after grant of letters.

§ 2819. The provisions contained in Title first of Part third, for the regulation of suits in the circuit court, and prescribing the time within which suits may be brought, so far as the same are applicable to suits before justices, and not contradicted by any provisions contained in this title, are hereby declared to be in full force, as to the rights of parties, and to suits brought before justices, as fully as if here repeated.

Rules of proceeding in the circuit court and limitation of actions applicable to suits before justices.

CHAPTER II.

SPECIAL PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

ARTICLE 1. Summary judgments.
" 2. Trial of right of property.
" 3. Attachments.
" 4. Forcible entry and unlawful detainer.

ARTICLE I.

Summary judgments.

SEC.
2820. Summary judgments for fifty dollars on motion, and five days' notice before justice in the following cases:
2821. Against justice; for acting as such after removal, &c.
2822. For failure to pay over money.
2823. Such motions made before any justice, within six months.
2824. Against constables; for acting after removal, &c.
2825. For failure to make the money on execution.
2826. For failure to pay over money collected, but demand and motion to be made in six months.
SEC.
2827. For failure to execute a summons.
2828. For failure to levy an attachment.
2829. For failure to return, or false return of process.
2830. In favor of constables on indemnifying bonds.
2831. Motions made in county of residence of defendants.
2832. If the damages, &c., increase the sum beyond fifty dollars, the motion should be made in the circuit court.

Summary judgments for less than fifty dollars on motion and five days' notice.

§ 2820. Judgments not exceeding fifty dollars may be rendered, on motion, by justices, in favor of the party aggrieved, or the other persons herein specified, against the persons hereinafter named, five days notice thereof in writing being given, specifying the cause for which such motion will be made, and the time and place.

Against justice for acting as such after removal, &c., forty dollars.

§ 2821. Against justices of the peace for acting in an official capacity as such, after their office has been vacated by removal from the precinct for which they were elected, or from any other cause; judgment for forty dollars, one half to the use of the county, and the residue to any one who will sue for the same.

For failure to pay over money.

§ 2822. For any money received or collected by a justice by virtue of his office, after demand made; judgment may be rendered for the amount so received or collected, with five per cent. a month thereon.

Such motions made before any justice of the county within six months.

§ 2823. The motions authorized by the two preceding sections may be made before any justice of the peace of the county in which such justice resides, within six months after the demand of the money from the justice, or within six months after the act done.

Against constables for acting after removal from precinct or vacation of office, forty dollars.

§ 2824. For acting as such after removal from the precinct for which they were elected, or after their term of office has expired, or is vacated from any cause; judgment for forty dollars, one half to the use of the county, and the other half to the use of any person who will sue for the same.

For failure to make the money on an execution.

§ 2825. For failing to make the money on any execution which by due diligence might have been made; judgment for the amount of the execution, and interest, and five per cent. damages on the amount thereof.

For failure to pay over money collected

§ 2826. For failing to pay over money collected or received in virtue of any execution, summons, or attachment, on demand by the plaintiff, his agent or attorney; judgment for the amount so received, and five per cent. per month on such amount from the time of demand made; but the demand must be made, and notice for summary judgment given, within six months after the receipt of the money.

Demand and motion to be made in six months.

For failure to execute a summons.

§ 2827. For failing to execute any summons which by proper diligence could have been executed; judgment for a sum not more than ten nor less than five dollars.

For failure to levy an attachment.

§ 2828. For failing to execute process of attachment, which by due diligence could have been executed, whereby the plaintiff has lost his debt; judgment for the amount of the debt, and interest.

Failure to return or false return of process.

§ 2829. For neglecting to make return of a summons, execution, or other process, or for making a false return; judgment for a sum not more than twenty nor less than five dollars.

In favor of constables on indemnifying bonds.

§ 2830. Judgment may in like manner be rendered in favor of the constable against the obligors in any bond or promisors in any undertaking to indemnify him in levying an attachment or execution; judgment for the same amount which is rendered against the constable for making such levy,

on three days' notice of the pending motion or suit against the constable.

Motions made in county of residence of defendants. Judgment against the sureties who have notice.

§ 2831. The motions authorized by this article may be made before any justice of the county in which the parties moved against reside, and judgments be obtained against such justice and constable, and such of the sureties for their official bond, or either of them, as may be notified that such motion will be made.

If the damages, interest, &c., increase the sum beyond fifty dollars, the motion is made in circuit court.

§ 2832. When the amount claimed, by the accruing interest, or by the addition of the damages, exceeds the sum of fifty dollars, the motion must be made in the circuit court of the county in which the parties moved against reside.

ARTICLE II.

Trial of right of property.

SEC.
2833. On claim and affidavit by a person not a defendant, and on filing bond with security, the property levied on to be restored.
2834. Proceedings to try the right, jury summoned.
2835. If a juror do not attend, &c., by-standers added.
2836. Jury sworn to render a just verdict.
2837. The value of each article to be assessed separately, and damages given if claim is put in for delay.

On claim and affidavit by person not a defendant and bond filed, the property must be delivered to the claimant.

§ 2833. When an attachment or execution is levied by a constable on personal property claimed by any person not a party to the writ, he may try the right to such property by making affidavit that he has a just title thereto, and executing bond in double the amount of the plaintiff's demand, payable to the plaintiff, with sufficient surety, to be approved by the constable, with condition to have the property forthcoming for the satisfaction of the plaintiff's judgment, if it be found liable therefor, and for the payment of such costs and damages as may be recovered for putting in the claim for delay; and thereupon the property must be restored to the person from whom it was taken.

Proceedings to try the right of property.

Jury summoned.

§ 2834. The constable must without delay return the affidavit and bond to the justice who issued the process, who must thereupon issue a writ directed to the constable, commanding him to summon seven householders of the precinct as jurors, to appear at a time and place to be by him designated, within the precinct, not less than five nor more than ten days from the issue of the writ, for the trial of the right of property.

If jurors do not attend, &c., by-standers to be called in.

§ 2835. If any of the jury fail to attend, or are incompetent to serve as jurors, or are challenged for cause, the deficiency must be supplied from the by-standers.

Jury sworn to render a just verdict.

§ 2836. When the jury is empannelled, they must be sworn well and truly to inquire into the right of property so levied

Plaintiff required to show that the property is liable.

on or attached, and a true verdict render, according to the evidence; and the burthen of proof that the property is liable to the satisfaction of the execution, or subject to the attachment, is cast on the plaintiff.

Assessment of separate value of each article.

§ 2837. If the claim was interposed to a levy by execution, or if the plaintiff in attachment has obtained judgment, the jury must, if they find for the plaintiff, ascertain the value of each article of property separately, as far as practicable, and if they are of opinion the claim was put in for delay, assess the plaintiff damages, not exceeding fifteen per cent. on the amount of the plaintiff's demand; for which, and for the costs of the claim suit, judgment must be rendered for the plaintiff against the defendant and his sureties; and should the property found subject not be delivered to the constable within five days thereafter, execution issues for the assessed value thereof, against the defendant and his sureties.

Damages if claim is put in for delay.

ARTICLE III.

Attachments.

SEC.

2838. Justices alone issue attachments for less than fifty dollars; grounds for issue of attachment.
2839. Rules as to attachments in other courts applicable.
2840. Form of attachments.
2841. Notice to be given of levy of attachment on land.
2842. Money in officer's hands and debts in suit not attached in justice's court.
2843. Sale of property before judgment in certain cases.
2844. Answer of garnishee to be in writing, and is evidence against him on an appeal.
2845. Replevied property to be delivered in ten days after judgment, execution on bond if neglected.
2846. Contents of answers, and collateral issues tried without a jury.
2847. Execution to issue if the property will not pay the debt.
2848. Appeals from justices' decisions on contents of answers and other collateral issues.
2849. Amendments permitted in the bond or affidavit on the trial on appeal.

Justices have exclusive right to issue attachments for less than fifty dollars.

§ 2838. Justices have the exclusive power to issue attachments, returnable before themselves, where the amount claimed does not exceed fifty dollars, in the following cases only:

Grounds of attachment.

1. To enforce the collection of a debt, whether due or not at the time the attachment is sued out.

2. To recover damages for the breach of a contract, where the damages are uncertain or unliquidated.

Rules as to attachments in other courts applicable.

§ 2839. The provisions contained in the first six Articles of Chapter first, Title second of this Part, are applicable to attachments issued by justices, except as otherwise provided in this article.

§ 2840. The form of the attachment must be in substance as follows:

State of Alabama, }
county. } To any constable of said county:

Form of the attachment

Whereas A. B. (or C. D. as the authorized agent or attorney of A. B.) hath complained on oath to me, E. F., a justice of the peace for the county aforesaid, that G. H. is (or will be) justly indebted to him in the sum of —— dollars, and has made affidavit, and given bond as required by law. You are hereby commanded to attach so much of the estate of G. H. as will be of value sufficient to satisfy the complaint and costs, and such estate, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had before me on the —— day of ——, at ——, when and where you must make return how you have executed this writ. Witness my hand this —— day of ——.

E. F., Justice of the Peace.

Notice of levy of attachment on land to be given.

§ 2841. When an attachment from a justice is levied on real estate, notice must be given as provided for by section 2797, and the papers after judgment against the defendant must be returned to the clerk of the circuit court by the justice for an order of sale, as in other cases of levy on lands by constables.

Money in officer's hands, or debts in suit in court, not attached by process, returnable before a justice.

§ 2842. Money in the hands of a sheriff or other executive officer of the court, cannot be attached by process from a justice of the peace, nor a debt in any court of record of this state, in any case in which the attachment or process is returnable before the justice.

Sale of property before judgment in certain cases

§ 2843. Perishable property, or when the expence of keeping property will materially impair its value, must be sold by order of the justice, when the debt upon which the attachment is sued out is not due, when the defendant in attachment is a non-resident, or where from any cause the judgment or sale is postponed, so that the property attached will materially deteriorate in value, unless the property is replevied, and the proceeds of such sale must be retained in the hands of the justice to abide the judgment.

Answer of garnishee in writing on oath and is evidence on appeal.

§ 2844. The garnishee must answer on oath in writing, or his statement be reduced to writing by the justice, and if an appeal is taken, the answer made before the justice is evidence against the garnishee, in the circuit court.

Property replevied to be delivered in ten days after judgment

Execution on bond forfeited.

§ 2845. Property replevied, must be delivered to the constable within ten days after judgment against the defendant, unless an appeal is prosecuted from the judgment, and on failure thereof, the constable must indorse the bond forfeited, upon which execution must issue against the parties thereto.

Justice tries contests of answers and collateral issues without a jury.

§ 2846. When the answer of a garnishee is contested, or when any collateral issues arise from a contest between a transferee or claimant of the debt attached, and the plaintiff, the question must be decided by the justice, without the intervention of a jury.

Execution issues after judgment if

§ 2847. When the property attached, or in the hands of the garnishee is not sufficient to satisfy the judgment, execu-

the property does not pay the debt.

tion may issue for the residue, and be levied on any other property of the defendant.

Appeals from justice's decision on contests of answers or other collateral issues.

§ 2848. The plaintiff, garnishee or the contestant, upon any collateral issue, may appeal to the circuit court from any judgment of the justice, within five days thereafter, by executing an undertaking in writing, with surety, payable to the adverse party; the garnishee in double the amount rendered against him, and the plaintiff and contestant in such sum as the justice may require, with condition as in other cases of appeals from a justice.

Bonds on such appeals.

Attachments not quashed on appeal for defect of form in affidavit, bond, &c., if party will amend, and no objection heard which was not made before justice.

§ 2849. No attachment can be quashed or dismissed in the circuit court, for any defect of form in the affidavit, attachment or bond, or for want of a bond, if the plaintiff is willing and able to execute a sufficient bond; and no objection can be made in the appellate court to the regularity of the proceedings, which was not made before the justice of the peace.

ARTICLE IV.

Forcible entry and unlawful detainer.

SEC.
2850. Cognizable before a justice of the county.
2851. Forcible entry and detainer defined.
2852. Unlawful detainer defined.
2853. Terms of years and estates of freehold included.
2854. Notice to defendant on complaint made. Form of notice.
2855. Notice where, when and by whom served.
2856. Issue made up, and if defendant does not appear, not guilty entered as his plea.
2857. If plaintiff succeed, writ of restitution issues, and execution for costs.
2858. If plaintiff fails he pays the cost.
2859. The estate or merits of the title not in issue.
2860. Three years' possession is a bar to any proceeding.
2861. Testimony; subpœnas and depositions.

SEC.
2862. Penalty for failure to execute process under this article.
2863. Such proceedings no bar to other remedies.
2864. Appeals allowed on giving bond and case tried anew in the circuit court.
2865. Appeal does not suspend the writ of restitution without bond for the rent.
2866. The bond and other papers, returned to the court in case of appeal.
2867. On affirmance of judgment for plaintiff, writ of restitution and judgment for the rent.
2868. Such cases tried by the justice of the precinct where the land lies, and if in a town, &c., by the mayor.
2869. Defaulting witnesses fined.
2870. Judgment for fine not made absolute until after notice, &c.
2871. Fees of witnesses, sheriff or constable.

Cognizable before a justice of county

§ 2850. The forcible entry upon and detainer, or the unlawful detainer, of lands, tenements, and hereditaments, is cognizable before a justice of the peace of the county where the offence happens.

Forcible entry and detainer defined.

§ 2851. A forcible entry and detainer, is where one by force or strong hand, or by exciting fear, or terror, enters upon and detains lands or tenements in the possession of another; as by breaking open doors, windows or any other

part of a house, whether any person be within or not; by threats of violence to the party in possession, or by such words or actions as have a tendency to excite fear or apprehension of danger; by putting out of doors or removing the goods or chattels of the party in possession; or by entering peaceably and then, by force or threats, turning or keeping ing the party out of possession.

Unlawful detainer defined.

§ 2852. An unlawful detainer is, where one who has lawfully entered into possession of lands or tenements, after the termination of his possessory interest, refuses, on demand in writing, to deliver the possession thereof to any one lawfully entitled thereto, his agent or attorney.

Terms of years and estates of freehold included.

§ 2853. The two preceding sections extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

On complaint made, notice issued to the defendant.

§ 2854. Upon the complaint being made, the justice of the peace must also issue a notice to the party complained of, to the following effect:

Form of notice.

The state of Alabama, } To C—— D——: You are
County. } hereby commanded to be and appear before me, at ——, on the —— day of ——, to answer to and make defence against a complaint exhibited to me, against you, by A—— B——, for a forcible entry and detainer, (or for an unlawful detainer, as the case may be.) Witness my hand, this —— day of ——.

E—— F——, justice of the peace.

Mode of serving notice.

§ 2855. The notice must be served on the defendant at least six days before the return day of the process, and may be served on him any where within the state. The return of the service thereof by any sheriff or constable of the state is sufficient, or proof of the fact may be made before the justice by a disinterested witness. It is sufficient to leave a copy thereof at his usual place of abode.

Issue made between the parties.

If defendant does not appear or plead "not guilty" taken as his plea.

§ 2856. If the parties appear, an issue must be made between them upon the complaint. If the defendant, having been duly cited, does not appear, or appearing, declines to plead, the cause proceeds as if the defendant had pleaded not guilty; or for a good cause the trial may be postponed, not more than fifteen days, at the cost of the applicant.

If plaintiff succeed, writ of restitution issued to be executed by the sheriff.

Costs.

§ 2857. If the justice determine in favor of the plaintiff, he must record the decision, and render judgment with costs, upon which he must issue a writ of execution, commanding the sheriff to restore the plaintiff to the possession of his lands and tenments, according to the complaint; and to levy and sell a sufficiency of the defendant's goods and chattels, lands and tenements, to satisfy the costs of the proceeding.

If plaintiff is cast he pays the costs, &c.

§ 2858. If the justice determine in favor of the defendant, judgment must be rendered against the plaintiff for the costs, upon which an execution may issue as in other cases; and in either case the items composing the bill of costs must be stated at the foot of the execution.

Estate or merits of the title not in issue.

§ 2859. The estate, or merits of the title, cannot be inquired into on the trial of any complaint exhibited under this article.

Quiet possession of three years is a bar to any recovery.

§ 2860. The uninterrupted occupation of the premises in controversy by the defendant, for the space of three entire years preceding the exhibition of the complaint, is, if the estate of the defendant is not determined, a bar to any proceeding under this article.

Subpœnas and depositions.

§ 2861. The justice before whom the complaint is exhibited must issue subpœnas for witnesses, at the request of either party, which may be served either by the sheriff or by a constable. Either party may also take the testimony of any witness living out of the county of the trial, by deposition, as in other cases before justices of the peace.

Penalty for failure of officer to execute process under this article.

§ 2862. Any sheriff or constable neglecting or refusing to execute any process placed in his hands, by a justice of the peace, in virtue of authority conferred by this article, forfeits two hundred dollars to the party aggrieved, to be recovered by action in the circuit court.

Proceedings under this article no bar to other remedies.

§ 2863. No proceeding had under this article, or judgment rendered, bars or prevents the party injured from prosecuting an action of trespass, or other action against the aggressor, or party offending.

Appeals from the judgment on giving bond, and case tried anew in circuit court.

§ 2864. Either party aggrieved by the judgment rendered in any proceeding instituted under this article, may prosecute an appeal thereon, within ten days thereafter, to the circuit court of the proper county, where the cause must be tried anew, without regard to any defect in the proceedings before the justice; the party praying the appeal executing bond, payable to the other party, in the penalty of treble the amount of the judgment for costs, with approved surety, conditioned to prosecute the appeal to effect, and pay and satisfy all costs, and the judgment which may be rendered by the circuit court.

Appeal does not suspend the writ of restitution without bond for rent, &c.

§ 2865. An appeal does not prevent the issue of a writ of restitution, unless the defendant, in addition to the bond described in the preceding section, execute a bond with surety, payable to the other party, in the penalty of twice the yearly value of the rent of the premises, with condition to pay him all such damages as he may sustain by the prosecution of the appeal; the value of the yearly rent must be ascertained by the justice.

All the papers, &c., together with the bond returned to the court on appeal as in other cases.

§ 2866. When an appeal is prosecuted, the justice of the peace must return to the circuit court the appeal bond, and all the papers and proceedings in the cause, together with his statement of the cause, as in other appeal cases; and judgment must be rendered in the circuit court against the principal and sureties in the appeal bond.

On affirmance of judgment against defendant, writ of restitution and judgment for rent.

§ 2867. If the appeal is prosecuted by the defendant below, and the judgment affirmed by the circuit court, a writ of restitution must be awarded, and, on motion of the appellees, judgment must be rendered against the appellant and his sureties, on his bond, for the value of the rent of the premises, pending the appeal, and also the costs.

§ 2868. The complaints provided for in this article must

be exhibited to and be tried by a justice of the peace, for the precinct in which the lands or tenements are situated. If in a city, or corporate town, before the mayor, intendant, or any justice of the peace thereof. If the office is vacated, or such justice, mayor, or intendant is disqualified, from any cause, from sitting, then by the justice of some adjoining precinct.

Tried by justice of precinct in which land is. If in a city, by the mayor, &c.

§ 2869. A witness duly subpœnaed and failing to attend, or refusing to testify, may be fined by the justice of the peace, not exceeding one hundred dollars, for the use of the county, for which he may issue his execution directed to the constable.

Fine of defaulting witness.

§ 2870. The judgment specified in the preceding section, must not be made absolute until a written notice has been served on such witness, informing him of the rendition of such judgment, ten days previous thereto.

Fees of the sheriff.

§ 2871. To witnesses, the same fees as allowed by law in the circuit court; to the sheriffs, for serving summons and return, one dollar; for executing writ of restitution, two dollars; for making money on execution, serving subpœnas, &c., same fees as in cases in the circuit court; to the constable, same fees as in other cases.

Of constable.

Title 4.

PROCEEDINGS IN CHANCERY.

CHAPTER 1. Cases of which courts of chancery take cognizance, and of the bill, answer, replication, and demurrer.
" 2. Of amendments, exceptions, filing papers, and serving notices.
" 3. Evidence in chancery.
" 4. References to the register.
" 5. Decrees pro confesso.
" 6. Bills of review, ne exeat, equitable attachments, and other writs of seizure.
" 7. Of injunctions, and the appointment of receivers.
" 8. Creditors' bills.
" 9. Of the resignation, death and removal of trustees.
" 10. Of issues out of chancery.
" 11. Of the rendition, lien, effect and enforcement of decrees, and of costs.

CHAPTER I.

CASES OF WHICH COURTS OF CHANCERY TAKE COGNIZANCE, AND OF THE BILL, ANSWER, REPLICATION, AND DEMURRER.

SEC.
2872. Jurisdiction against residents, or in respect of liens, or when cause of suit arises here: against non-residents.
2873. Joint demand may be prosecuted against a single defendant.
2874. Suits commenced by bill addressed to the chancellor.

SEC.
2875. In what district to be filed.
2876. Bill to contain only a simple statement of the facts, and a prayer for the proper relief.
2877. Answer not evidence if sworn answer be waived.
2878. Summons issued, and copy served on each defendant.
2879. Sheriff to serve the process.
2880. Each defendant may have a copy of the bill, on demand, which is taxed as costs.
2881. Summons executed in another county, to be returned by mail.
2882. It should be mailed within five days after service.
2883. Penalty for failure to return a summons.
2884. Publication as to non-residents.
2885. Fee for publication paid to the register.
2886. Copy of bill delivered each defendant, if required.
2887. Non-resident plaintiffs required to give security for costs, or bill dismissed.
2888. Orders of publication in conformity to the rules now in force.
2889. Publication and proceedings against unknown defendants.
SEC.
2890. Decree pro confesso, on failure to answer for thirty days.
2891. Answer compelled by attachment.
2892. Arrest under attachment, and discharge, upon bond being given to answer.
2893. Sheriff and his sureties liable for failure to return attachment or bond.
2894. Suit on forfeiture of the bond.
2895. Defendant imprisoned, until answer filed or bond given.
2896. Affidavit to answer, before whom made.
2897. Defendant may protect himself from answering fully.
2898. Application for leave to answer specially granted only after notice to adverse party.
2899. All defences set up in the answer without special plea.
2900. Grounds of demurrer set out specially.
2901. No replication required.
2902. When cause is heard on bill and answer, answer taken as true, if responsive.

Jurisdiction of courts of chancery in cases against residents and in respect of liens, &c., against non-residents or where cause arose in this state.

§ 2872. Courts of chancery must take cognizance of cases in equity:

1. When the defendants reside in this state.

2. Against non-residents, when the object of the suit concerns an estate of, lien, or charge, upon lands, or the disposition thereof, or any interest in, title to, or incumbrance on, personal property, within this state; or where the cause of action arose, or the act on which the suit is predicated, was to have been performed in this state.

3. In such other cases as such courts are by law required to take jurisdiction of.

Joint demand may be prosecuted against one defendant.

§ 2873. When the plaintiff has a joint demand, he may proceed against one or more of the parties thereto, without joining the others.

Suits commenced by bill.

§ 2874. The mode of commencing the suit in chancery is by bill, addressed to the chancellor of the division in which the same is filed.

In what district to be filed.

§ 2875. It must be filed in the district in which the defendants, or a material defendant, resides; and if to enjoin proceedings on judgments in other courts, it may be filed in the district in which such proceedings are pending, or judgment rendered: and in case of non-residents, in the district where the subject of the suit, or any portion of the same, is; where the cause of action arose, or the act on which the suit is predicated, was to be performed.

§ 2876. It must contain a clear and orderly statement of the facts on which the suit is founded, without prolixity or

repetition, and conclude with a prayer for the appropriate relief, without averring any combination or confederacy between the defendants, or others, the insufficiency of the remedy at law, or charging pretences by the defendants; and it is the duty of the courts to discountenance prolix statements, and unnecessary and false allegations, in all chancery pleadings.

Bill to contain only a statement of facts and a prayer for relief.

§ 2877. When a bill is filed for any other purpose than discovery only, the plaintiff may waive in, or upon the bill, the answer being made on the oath of the defendants, or either of them, and in such case the answer is entitled to no more weight as evidence than the bill.

Complainant may waive oath to answer, and it is then entitled to no weight as evidence.

§ 2878. Upon the filing of the bill, the register must forthwith issue a summons and copy for each defendant, against whom publication is not shown to be necessary; requiring him to appear, and plead to or answer the bill within thirty days after service.

Summons issued and copy to be served on each defendant.

§ 2879. A copy of such summons must be personally served by the sheriff, if the defendant is to be found in his county, his return indorsed on the original, and returned to the register within five days after service.

Sheriff to serve the copies on defendants.

§ 2880. It is not necessary to serve the defendants with a copy of the bill; but each defendant is, on application to the register, entitled to a copy, unless otherwise provided by law, which must be charged in the bill of costs.

Each defendant may demand a copy of bill.

§ 2881. Where the summons is executed in any other county than the one in which the court, from which the same issues, is held, the return may be made by mail, directed to the register; the title of the suit being indorsed on the envelope, and the word "summons" written against the same.

Summons executed in another county, returned by mail.

§ 2882. When the return is by mail, the summons directed, and indorsed according to the provisions of the preceding section, must be deposited in a post office of the county in which the same is executed, within five days after the execution.

Mailed within five days after service.

§ 2883. For failing to return a summons, the sheriff and his securities, or either of them, having three days' notice, are liable to the plaintiff in the sum of one hundred dollars; to be recovered by motion in the circuit court of the county in which the court from which such summons issued is held; and on the trial of such motion, the certificate of the post master of the proper county, that on such a day the summons, directed and indorsed as required by the provisions of section 2881, was deposited in the office, is evidence of the fact.

Penalty for failure to return a summons.

§ 2884. If any defendant is shown to be a non-resident, or if his residence is unknown, or if being a resident, he has been absent from the state more than six months from the filing of the bill, or conceals himself so that process cannot be served on him, the register must on proof thereof, supported by affidavit, make out and superintend the execution of the appropriate order of publication.

Publication as to non-residents, &c.

Fee for publication to be deposited with the register.

§ 2885. In all cases in which an order of publication is necessary, a sufficient amount of money must be deposited with the register to cover the expence of such publication, and the bill may be dismissed on thirty days' notice to the plaintiff, or his solicitor, on failure to make such deposit within that time.

Copy of bill delivered each defendant and taxed as costs

§ 2886. Any defendant, after service of a summons, or after being brought into court by publication, may, on application to the register, obtain a copy of the bill to be taxed as other costs.

Security for costs required of non-resident plaintiffs, &c.

§ 2887. When any plaintiff is a non-resident, security for such costs as may be decreed against him must be given, to be approved by the register; and if not given within thirty days after notice to such plaintiff, or his solicitor, the bill may be dismissed, and the solicitor taxed with the costs.

Orders of publication to conform to rules of court

§ 2888. Orders of publication must conform to the rules now in force in the courts of chancery in this state, and to those which may hereafter be made.

Publication and proceedings against defendants whose names are unknown

§ 2889. In cases where it is necessary to make any persons defendants to a bill, and the names of all, or any of them, are unknown to the plaintiff, and cannot be ascertained on diligent inquiry, and he annexes to his bill an affidavit that the names of such persons are unknown, that he has made diligent inquiry to ascertain the same, and that their residence as he believes is not in this state, proceedings may be had, and a decree be rendered against them, without naming them; and the register must make publication as in case of non-residents, in such paper as he thinks proper, describing such unknown parties as near as may be, by the character in which they are sued, and with reference to their title or interest in the subject-matter.

Defendant to answer in thirty days, or decree pro confesso passed.

§ 2890. A defendant may answer at any time after the bill is filed, and must answer within thirty days after the service of the summons, or after perfecting publication, or obtain further time, or a decree pro confesso may be passed.

Answer from residents by attachment.

§ 2891. Answers from resident defendants may be compelled by attachments.

Arrest under attachment and discharge on bond being given to answer.

§ 2892. Such attachments are served by the arrest of the defendant, and bringing him before a chancellor, circuit judge, or register, who may discharge him on his giving bond and security, in such sum as may be fixed by such chancellor, circuit judge, or register, to be approved by the arresting officer, payable to the register of the court in which the bill is filed, and conditioned, that he will file a full answer to the bill, within a time to be prescribed by the officer before whom such defendant is brought; which bond must be returned with the attachment, within the same time after service, and in the same manner, if by mail, as a summons is required to be returned under the provisions of this chapter.

Sheriff and his sureties liable for failing

§ 2893. The sheriff and his securities are liable for failing to return such attachment, or bond, to the same amount, re-

coverable on the same notice, in the same court, by the plaintiff, and the certificate of the post master is evidence, as in case of a failure to return the summons. ure to return an attachment.

§ 2894. Upon the forfeiture of the bond, the chancellor may direct the same to be sued, and the whole, or such part of the penalty thereof as he directs, may be recovered against any or all of the obligors, having ten days' notice, by motion in the circuit court of the county in which the court issuing the attachment is held; and on the trial of such motion, the indorsement by the register of forfeiture, is presumptive evidence of the fact. Suit on forfeiture of the attachment bond.

§ 2895. In case a defendant refuses or neglects to give such bond, he must be committed to jail by the sheriff, and there kept until he files a full and sufficient answer with the register. Defendant imprisoned until he files an answer or gives bond.

§ 2896. When an answer is required to be sworn to, the oath may be administered by any judge of any court of record, chancellor, judge of the United States, or either of them; by a commissioner appointed by the register, notary public, commissioner of this state, or by any justice of the peace or register in chancery in this state. Oath to answer; by whom administered.

§ 2897. A defendant may in his answer protect himself from furnishing a full answer to the allegations of the bill. Defendant may protect himself from answering fully.

§ 2898. Where a party offers to answer specially, and applies for leave to do so, the ground of such application may be contested, and the application must only be granted upon reasonable notice. Application to answer specially granted only on notice to adverse party.

§ 2899. A defendant may incorporate all matters of defence in his answer, and is not required to plead specially in any case. All defences may be set up in the answer.

§ 2900. A demurrer to the bill must set forth the grounds of demurrer specially, and otherwise must not be heard. Ground of demurrer to be set out specially.

§ 2901. No replication is necessary to an answer. No replication.

§ 2902. When the cause is heard on bill and answer without testimony, the answer must be taken to be true, so far as it is responsive to the allegations of the bill, except in those cases where the complainant has waived the oath of the defendant to the answer. If heard on bill and answer, answer taken as true so far as responsive.

CHAPTER II.

OF AMENDMENTS, EXCEPTIONS, FILING OF PAPERS AND SERVING NOTICES.

SEC.
2903. Amendments of course before answer.
2904. On amendment being filed, after copy of the bill has been obtained, copy to be paid for.
2905. Register may allow amendments after answer, on notice and payment of costs of amendment.
2906. Amendments after publication allowed only by the chancellor, and on payment of costs.

SEC.
2907. Answer to amendment filed in thirty days.
2908. Objection for want of parties, or joinder of improper parties set for separate hearing.
2909. Decree against the parties in court, when the injunction for want of parties, &c., is first taken at the hearing.
2910. Pleadings to be indorsed with the date of filing.
2911. Notice of motions, &c., served on solicitor.
2912. Notice to parties in default entered on the order book.
2913. Exceptions to answers to be filed

SEC.
in sixty days, notice of day for hearing.
2914. Defendant may examine complainant on oath.
2915. Exceptions to such interrogatories.
2916. Defendant may set up any ground of relief, connected with the suit, and require complainant to answer it.
2917. This defence on the nature of a cross bill.
2918. Answer to such matter on oath barred, and answer then no evidence.
2919. Such answers filed as other answers.

Amendments before answer.

§ 2903. Amendments to bills before answers, pleas, or demurrers filed, are allowable as of course, and without notice, and amendments to any summons may be made before service thereof.

Amendment obtained after copy of bill is furnished defendant by paying for the copy.

§ 2904. After a defendant has obtained a copy of the bill from the register, and before answer, plea, or demurrer, amendments to the bill may be made without notice, upon payment of the costs of furnishing a copy of the amendment to such defendants as have obtained a copy of the bill; and amendments may also be made after demurrer and before argument, on the same terms.

Register may allow amendments after answer.

§ 2905. The register may, on notice to the opposing party, allow amendments to bills after answer, and amendments to answers, but only on the payment of the costs of the amendment by the party making the application.

Amendments after publication only allowed by chancellor, and on payment of costs

§ 2906. After publication of testimony, the plaintiff can amend his bill, or the defendant his answer, only by leave of the chancellor, on petition, alleging the special matter of amendment proposed to be made, and supported by affidavit, showing that such matter, with the use of due diligence, could not sooner have been introduced into such bill or answer; but permission for such amendment must only be granted on payment of the costs up to the time of the amendment.

Answer to amendment filed in thirty days.

§ 2907. In all cases where an amendment of the bill is made after answer filed, and an answer thereto is necessary, the defendants are allowed thirty days after notice of the amendment to answer the same, and failing so to do, or to obtain further time, the matter of the amendment may be taken as confessed; but such defendant may, at any time before the cause is set for hearing, obtain leave to set aside the order pro confesso, on filing a full and sufficient answer to the matter of amendment, on such terms as may be imposed by the chancellor or register.

Objection for want of parties or joinder of improp-

§ 2908. When an objection is made to a bill for want of parties, or the joinder of improper parties, it may be set for hearing on that objection only; and if not set for hearing on

that ground, the court, if the objection prevail on the final hearing, must dismiss the bill. er parties set for separate hearing.

§ 2909. If the defendant, at the hearing of a cause, take an objection for want of parties, not having by plea or answer taken the objection, the court may render a decree saving the rights of parties not before it, or it may grant leave to amend the bill, on terms not extending beyond the payment of costs. Decree when objection for improper or want of parties first taken at the hearing.

§ 2910. All bills, answers, and other papers filed in any cause, must be indorsed by the register, with the true date on which they were filed. Pleadings indorsed with date of filing.

§ 2911. Notice in relation to any supplemental bill, amendment, decree, motion, or other proceeding in the court of chancery, served on the solicitor of the party, is valid. Notice of motions, &c., served on solicitor.

§ 2912. When parties are in default, for want of an answer or other cause, the notices may be entered on the order book of the register, and such entries for such time as is fixed by the register, are sufficient in cases of amendments, supplemental bills, and of other orders in the cause. Notices to parties in default, &c.

§ 2913. Exceptions to answers must be made within sixty days after the same are filed, and notice must be given by the register of the day of hearing of the same. Exceptions to answers filed in sixty days. Notice of hearing them

§ 2914. If the defendant wishes to examine the complainant touching the subject-matter of the bill, or his defence, he may, after filing his answer, exhibit interrogatories to the complainant, and call upon him to answer the same; and on his failing to answer them within such time as may be prescribed by the register, his bill must be dismissed with costs, unless such time is extended. Defendant may examine the complainant on oath.

§ 2915. Exceptions may be taken to such interrogatories, and heard before the register at such time as he may prescribe, on reasonable notice to the defendant or his solicitor, subject to an appeal to the chancellor. Exceptions to such interrogatories.

§ 2916. The defendant may obtain relief against the complainant for any cause connected with or growing out of the subject-matter of the bill, by alleging in his answer, and as a part thereof, the facts upon which such relief is prayed, and require the complainant to answer the same upon oath. Defendant may obtain relief by setting up facts in his answer

§ 2917. The matter thus put in issue must be considered in the nature of a cross bill, and be heard at the same time as the original bill. This defence similar to a cross bill.

§ 2918. The defendant may waive the answer of the complainant to such new matter being made upon oath, which waiver must be made in or upon the answer; and in such case the answer of the complainant to such new matter is not evidence, unless the defendant use it as such. Answer to such matter on oath may be waived, and answer no evidence.

§ 2919. The complainant must file his answer to such new matter under the rules and regulations provided in this title for the answers of defendants to original bills. Answers to such matters filed as other answers.

CHAPTER III.

EVIDENCE IN CHANCERY.

SEC.
2920. Testimony taken by interrogatories under rules of the court, &c.
2921. Rules of evidence as to competency same as at law.
2922. Testimony, when to be taken.
2923. Exhibits proved by affidavit before register.
2924. Commissioners to take testimony.
2925. Interrogatories served ten days before issue of commission.
2926. Notice given to non-resident by filing them in the register's office.
2927. Rebutting interrogatories filed in five days, &c.
2928. Limitations of suits in chancery.
2929. Filing of bill is the commencement of suit.
2930. Attendance of witnesses before commissioners.
2931. Defaulting witnesses.

Testimony taken by interrogatories

§ 2920. Testimony in chancery causes must be taken by interrogatories, under the rules now in force, or such as may hereafter be adopted.

Rules of evidence as to competency same as at common law.

§ 2921. The rules of evidence as to the competency of witnesses in courts of chancery, are the same as those declared by this code in courts of law, except so far as the same are altered by any provision of this title.

Testimony; when taken.

§ 2922. The plaintiff may take testimony at any time after answer, or after a decree pro confesso, and the defendant at any time after filing his answer.

Exhibits proved by affidavit before register.

§ 2923. Exhibits to bills and answers may be proven by affidavits filed with the exhibits in the register's office, thirty days before the hearing.

Commissions to take testimony.

§ 2924. All commissions for the taking of testimony must be directed to one or more commissioners, to be appointed by the register, and made returnable with all convenient speed.

Interrogatories served ten days before issue of commission.

§ 2925. No commission to take testimony must issue, until the adverse party or his solicitor, if either of them reside in the district, have been served with a copy of the interrogatories for ten days.

If adverse party a non-resident, &c.

§ 2926. If such adverse party or his solicitor do not reside in the district, this notice may be given by filing interrogatories in the office of the register for ten days.

Rebutting interrogatories filed in five days.

§ 2927. After such notice has been given, if cross interrogatories are filed, the party has five days to file rebutting interrogatories, but this time may be extended, on application to the register, without notice.

Limitation of suits in chancery.

§ 2928. The provisions of Chapter twenty-one, Title one, Part three, apply to suits commenced by bill in chancery.

Filing of bills is commencement of suit.

§ 2929. The filing of the bill is the commencement of the suit, if prosecuted, whether the defendant is brought into court by personal service or by publication.

Attendance of witnesses before commissioners.

§ 2930. The attendance of a witness may be enforced by commissioners in chancery causes, in the same mode, and their attendance proved and certified to the register in all respects the same as in the execution of commissions from courts of law.

§ 2931. If the witness fails to attend before the commissioner, being served with a subpœna so to do, the commissioner must indorse on the subpœna that the witness failed to attend, and return the same to the clerk of the circuit court of the county, who must enter the case on the docket, and such proceedings may be had as in the case of defaulting witnesses in such circuit court; the indorsement on the subpœna being presumptive evidence of the default of such witness. Default of witness.

CHAPTER IV.

REFERENCES TO THE REGISTER.

SEC.		SEC.	
2932.	Proceedings before register on a reference.	2935.	Either party examined by the other as to particular items.
2933.	Notice of day for hearing given by the register.	2936.	Evidence in the cause used before the register.
2934.	Authority of the register on a reference.	2937.	Exceptions to the decisions of the register.

§ 2932. Whenever a reference is made to the register, the party at whose instance, or for whose benefit the reference is made, must cause such matter to be presented to the register within the time limited for the hearing; and if no time is limited, within three months after the reference is made; and if such party omit to do so, the adverse party may cause proceedings to be had before the register, at the costs of the party procuring the reference. Proceedings before register on a reference.

§ 2933. Upon any such reference, the register must assign a time and place for proceeding therein, and give reasonable notice to each of the parties, or their solicitors; and if either party fail to appear at the time and place appointed, the register may proceed exparte, or in his discretion adjourn the examination to an other day, giving notice to the adverse party or his counsel of such adjournment. Notice given by register of day for hearing, &c.

§ 2934. The register, in all matters referred, must proceed with the least practicable delay, and has authority: Authority of the register on a reference.

1. To examine the parties on oath, as to all the items of reference not exceeding twenty dollars in amount.

2. To require the production of all books, papers, writings, vouchers, and documents in relation to such matters.

3. To examine on oath, viva voce, all witnesses produced by the parties before him.

4. To hear the depositions of witnesses taken under a commission, as in other chancery cases.

5. To do all other acts, and direct all other inquiries and proceedings in the matters before him, which may be necessary, subject at all times to the revision and control of the chancellor.

Each party examined by the other as to particular items.

§ 2935. On a reference before the register, either party may examine the adverse party, as to any one or more items or matters, without making him a witness as to any other items or matters.

Evidence in cause used before register, &c.

§ 2936. All affidavits, depositions, and documents, which have been made or filed in the cause, may be used on reference before the register.

Exceptions to register's decisions.

§ 2937. Either party may reserve, in writing, any question arising on a reference for the revision of the chancellor.

CHAPTER V.

DECREES PRO CONFESSO.

SEC.
2938. Decree pro confesso on failure to answer, plead, &c., for thirty days.
2939. On such decree allegations of bill taken as admitted.
2940. Case not to be heard on the day of such decree.
2941. Decree may be contested, or appearance made before register on reference.
2942. Decree set aside on defendant's filing answer and paying costs.
2943. Decree against defendant as to whom publication was made, set aside on answer and payment of costs.
2944. Chancellor may allow answer after publication of testimony.
2945. Decree against defendants without personal service, not absolute for eighteen months; copy of decree to be sent him.

SEC.
2946. Decree set aside on petition of such defendants, within eighteen months, and defence on the merits permitted.
2947. The testimony on file used by either party.
2948. Rights and liabilities of parties without notice, extend to their representatives
2949. Execution against parties by publication on decrees so obtained on giving refunding bond.
2950. On service of copy, decree becomes conclusive in six months, if petition to set it aside is not filed.
2951. Preceding section not applicable to infants or married women, except as to their separate estates.

Decrees pro confesso on failure to answer, &c., for thirty days.

§ 2938. Decrees pro confesso may be taken before the register on the failure of a defendant to answer or plead to the bill, within thirty days after service of the summons, or thirty days after the publication has been perfected, unless the time for answering or pleading has been extended; in which case a decree pro confesso may be passed, at the expiration of such time.

On such decrees allegation of bill taken as admitted.

§ 2939. In all cases in which decrees pro confesso are lawfully taken, the allegations of the bill are to be regarded as admitted, except in the case of infant defendants, lunatics, executors, and administrators, and bills for divorce.

Not to be heard on day of taking such decree.

§ 2940. No cause in which a decree pro confesso is taken, must be heard on the same day; but the cause may be set for hearing on any subsequent day.

Defendant may contest a decree on the bill or appear on a reference.

§ 2941. A defendant against whom a decree pro confesso is taken, can appear and contest a decree on the merits of the bill, or may appear before the register on a reference.

Decree set aside on making full answer, &c., by defendant served with process.

§ 2942. A defendant who has been served with a summons, may at any time before publication of the testimony, on making a proper showing, obtain leave from the chancellor or register to set aside such decree, upon filing a full and sufficient answer, and the payment of costs up to the time of setting aside such decree.

By defendant on publication on certain terms.

§ 2943. A defendant brought into court by publication, against whom a decree pro confesso has been rendered, may also before publication of the testimony, set aside such decree on application to the chancellor or register, on filing a full and sufficient answer, and such other terms, not extending beyond the payment of costs to the time of the application, as may be imposed.

Chancellor may allow answer after publication.

§ 2944. The permission to file an answer after publication of the testimony, rests in the sound discretion of the chancellor.

Decree against defendant without personal service not absolute for eighteen months.

§ 2945. A decree made against a defendant, without personal service, who does not appear, is not absolute for eighteen months from the rendition thereof; and in such case, the court must direct a copy of the decree to be sent to such defendant, or in case of infants, or lunatics, or married women, (unless the suit or matter determined concerns their separate estates,) to their guardians or husbands, if their residence can be ascertained.

Copy of decree sent him

Petition to set aside decree and defend on the merits.

§ 2946. Such defendants may file a petition to set aside such decree and to defend the suit on the merits, at any time within such eighteen months; and upon sufficient cause shown, the chancellor has full power to open the decree and to hear the cause as if no decree had been rendered.

Testimony on file used by either party.

§ 2947. In the case provided for in the preceding section, either party can use the testimony of witnesses on file in the cause, who have died or removed from the state, after the decree was rendered.

Rights and liabilities of parties without service extend to representatives

§ 2948. The rights and liabilities of any plaintiff or defendant on bills taken pro confesso, without personal service, extend to the personal representatives of any deceased plaintiff or defendant; and with reference to the altered state of the parties, and any new interest acquired, the chancellor may, on petition, upon due notice being given and sustained by proof, permit any party to file such bills and adopt such proceedings as the circumstances of the case may require, for having the matter of the decree duly considered, and the rights of the parties interested therein duly ascertained and determined.

Execution on decrees on bills taken pro confesso, without service, on giving bond to indemnify in case decree is set aside.

§ 2949. It is no objection to the execution of a decree rendered against a defendant, that it was founded on a bill taken pro confesso without personal service; but before the execution of such decree, the plaintiff or party interested, must give bond with two sureties, payable to and approved by the register, in a penalty to be prescribed by the chancellor or such register, conditioned to pay the pecuniary value of the personal property which may be disposed of, or placed

beyond the control of the court or party, by the execution of the decree, and interest thereon from the time such property is so disposed of or placed beyond such control; and to account for the value, rents and profits of any real estate transferred by the operation of such decree; and further to abide and perform such decree, as the court may render, if the decree taken on the bill pro confesso is set aside; and the chancellor may, if such decree is set aside, render a final decree against all the parties to such bond.

On service of copy of decree it is conclusive in six months if no petition is made to set it aside.

§ 2950. Where personal service of a decree rendered under the provisions of this chapter, is made by serving the defendant with a copy of such decree, the same is conclusive and binding on him, if the petition to set aside such decree is not made within six months from such service.

Not applicable to infants, &c., or married women, but in respect of their separate estate.

§ 2951. The provisions of the preceding section do not apply to infants, lunatics, or married women, (unless the suit or matter determined concerns their separate estate;) and such persons are allowed twelve months from the termination of their respective disabilities, to show cause against such decrees.

CHAPTER VI.

BILLS OF REVIEW, NE EXEAT, EQUITABLE ATTACHMENTS, AND OTHER WRITS OF SEIZURE.

SEC.

2952. Decree may be suspended till bill of review heard.
2953. Application to file them, made within three years.
2954. Ne exeat and equitable attachments issued on equitable demands.
2955. Answers in such cases examined in vacation and levy or bail discharged, on notice to complainant.
2956. Attachments also issued on legal demands to reach equitable assets.
2957. Equitable attachments issue before judgment.
2958. Such attachments to specify the property to be subjected.
2959. Replevy of property, &c., attached.
2960. Replevy bond to be returned.

SEC.

2961. Lien of such attachments.
2962. If property not delivered on the decree, execution issues on the replevy bond.
2963. Writs of ne exeat and attachment; by whom issued.
2964. Issued also in aid of any suit already commenced.
2965. Affidavit to be made by the plaintiff.
2966. Property restored on giving replevy bond.
2967. If no bond is given by defendant after five days, it is delivered to plaintiff on his giving bond.
2968. Writs, bonds, &c., to be returned to the register.
2969. Decree when plaintiff sustains his claim.
2970. Liability of plaintiff and his sureties if cast.

Suspension of decree on presenting a bill of review.

§ 2952. When a decree has been rendered, and a bill of review is presented, the chancellor may direct the proceedings on such decree to be suspended, until a decree is rendered on such bill of review, or until the further order of the court; requiring such bond of the plaintiff as will effectually

protect the interest of the parties interested in the decree rendered; on which bond the chancellor may render a final decree for any portion or the whole of the penalty.

Application to file such bills; when made.

§ 2953. Application to file bills of review, must be made within three years after the rendition of the decree, except in cases of infants, or married women, (unless the matter of the decree relates to their separate estate,) and lunatics, who may apply within three years after the termination of their respective disabilities.

Ne exeat and equitable attachments.

§ 2954. Writs of ne exeat, and equitable attachments, may issue on equitable debts and demands, under the same circumstances, and courts must observe, in the issue of such writs, the provisions of courts of law in relation to bail and attachment writs, except so far as the same are altered by this code.

Chancellors may examine answers in such cases in vacation.

§ 2955. Chancellors may in vacation examine all answers in relation to writs of ne exeat, and attachments returnable into chancery, and other writs of seizure, discharge or reduce any bail taken, or levy made, on application and reasonable notice to the adverse party.

Attachments from chancery on legal demands to subject equitable effects.

§ 2756. Courts of chancery may also issue writs of attachment on legal demands, founded on any judgment or contract, express or implied, in such cases as attachments may issue from courts of law; which attachments operate only on the effects of the defendant held by an equitable title or on demands owing by other persons to which the defendant against whom the attachment issues is in equity entitled, whether due or not.

Equitable attachments issue before judgment for the debt, &c.

§ 2957. To authorize the issue of equitable attachments, it is not necessary that the demand of the plaintiff should be reduced to a judgment, but the court may render a decree for the amount proved, and execution may issue to enforce the same as from courts of law.

Such attachments must specify the property, &c., to be subjected.

§ 2958. Equitable attachments must specify the property, effects or demands on which they are intended to operate; and a copy of the bill must in such cases be served with the summons.

Replevy of property, &c., attached.

§ 2959. Any property levied on by an equitable attachment, may be replevied by the defendant, or any one for him, on giving bond and security in double the value of the property levied on, to be approved by the sheriff, payable to the plaintiff, and conditioned as replevy bonds on attachments from courts of law.

Replevy bond to be returned.

§ 2960. When property levied on by an equitable attachment is replevied, the bond must be returned with the attachment.

Lien of such attachments.

§ 2961. Equitable attachments are a lien upon the property or debts attached, from the service of the attachment.

If property not delivered execution issues on the replevy bond.

§ 2962. If a decree is rendered in a case in which an equitable attachment has been levied, and the property replevied is not forthcoming within such time as the court may direct, to be proven by the affidavit of the party before the register,

the replevin bond in such case has the force of a judgment, and execution may issue thereon for the whole or any portion of the penalty, as the court may direct, against any or all of the parties thereto.

Writs of ne exeat and attachment; by whom issued.

§ 2963. Chancellors, circuit judges, and registers of the court in which the bill is filed, may make all necessary orders for the issuing of writs of ne exeat, and equitable attachments, and for the sale of personal property levied on, as in like cases from courts of law; the money arising from such sale to be paid to the register.

Such writs also issued in aid of any suit commenced in chancery.

§ 2964. Writs may also issue from the courts of chancery on an original bill, or in aid of a suit pending in such court, by the order of any chancellor, judge of the circuit court, or register, for the seizure of personal property where the same is claimed under an equitable title, or where a decree is sought against the same, and it is in danger of being wasted, carried beyond the jurisdiction of the court, or otherwise disposed of.

Affidavit to be made by the plaintiff.

§ 2965. The plaintiff in such case must sustain his claim by affidavit, and give bond with security, payable to the defendant, in double the value of the property, to be approved by the register, conditioned to pay all damages the defendant may sustain by the wrongful or vexatious suing out of such writ.

Property restored on giving bond.

§ 2966. The officer executing such writ must restore the property seized, to the defendant, on his giving bond in double the value of the same, with security, to be approved by such officer, payable to the plaintiff, and conditioned to have such property forthcoming to answer the decree of the court.

If bond is not given in five days the property is delivered to plaintiff on his giving bond.

§ 2967. If the defendants neglect for five days after the seizure of such property to give such bond, the sheriff must deliver the same to the plaintiff, on his giving bond and security in double the value of such property, to be approved by the sheriff, payable to the defendant, conditioned, if unsuccessful in his suit, to return such property within thirty days after its determination.

Writs, bonds, &c., to be returned to the register.

§ 2968. Such writs, with the proper return thereon, and the bonds taken under the provisions of either of the two last sections, must be returned to the register of the court from which the writ issues.

Decree when plaintiff sustains his claim.

§ 2969. If the claim of the plaintiff is sustained, the court may direct that if its decree in relation to such property is not performed within a specified time, execution may issue on the bond of the defendant for all, or such portion of its penalty as the court may determine, under all the circumstances.

Liability of plaintiff and his sureties if he is cast.

§ 2970. If the plaintiff is unsuccessful, and fails to deliver the property to the defendant within thirty days after the determination of the suit, he and his sureties are liable to an action, and in case of a recovery, to damages not exceeding fifty per centum on the value of the property.

CHAPTER VII.

OF INJUNCTIONS, AND THE APPOINTMENT OF RECEIVERS.

SEC.
2971. By whom granted.
2972. Injunction of a judgment is a release of errors.
2973. Bond and security required on injunction of judgments.
2974. On grant of injunction after recovery of land, bond and security required.
2975. In other cases bond for the damages required.
2976. Application refused by one circuit judge not to be granted by another; if refused by chancellor, may be examined by a judge of the supreme court.
2977. Application not to be made to supreme court judge in the first instance.
2978. Refusal to grant injunction to be indorsed on the bill.
2979. Damages for delay on dissolution of injunction.
2980. The bond, on dissolution of an injunction, has the force of a judgment; execution issues.
2981. Execution for costs.
2982. If injunction of a judgment is dissolved, pending the suit, a refunding bond is required.
2983. Motion to dissolve may be made in vacation.
2984. Appeal to the supreme court on orders dissolving judgments, and heard at first term.
2985. Notice of an injunction of a judgment served on the attorney is valid.
2986. Receivers appointed only by the chancellor.

By whom granted.

§ 2971. Injunctions may be granted by the judges of the supreme and circuit courts, chancellors, and no other officers.

Injunction of judgment is a release of errors.

§ 2972. An injunction obtained by a defendant to a judgment at law, to stay proceedings thereon, operates as a release of errors as to such defendant.

On injunction of judgment bond and security required.

§ 2973. No injunction must issue to stay proceedings after judgment, in a personal action, until the party at whose application the writ issues, gives bond and security in double the amount of such judgment, payable to and approved by the register, conditioned on the dissolution of such injunction, to pay the amount of the judgment enjoined, with interest, and also such damages and costs as may be decreed against such party.

On grant of injunctions after recovery of lands, bond and security required.

§ 2974. No injunction must issue to stay proceedings at law after judgment in any action for the recovery of lands, unless the party give bond and security, payable to and approved by the register, in such sum as the officer granting the application directs, conditioned for the payment of the damages in such judgment if enjoined, and also all damages and costs which the plaintiff in such judgment sustains, by the suing out such injunction, if the same is dissolved.

In other cases bond to pay the damages incurred is required.

§ 2975. In other cases, the party must give bond with security in such sum as the officer granting the application directs, payable to and approved by the register, and conditioned to pay all damages which any person may sustain, by the suing out of such injunction, if the same is dissolved.

Application refused by one circuit judge not to be granted by another, and if refused by a chan-

§ 2976. If any application is made to a circuit judge for an injunction, and refused, no other circuit judge can act on the application, but the application may be made to a chancellor or judge of the supreme court; if refused by a chancellor, it may be renewed to a judge of the supreme court,

cellor may be revised by a judge of supreme court.

but no other officer; and if refused by a judge of the supreme court, cannot be renewed.

Application not made to supreme court judge unless refused by another.

§ 2977. No replication must be made to a judge of the supreme court, for an injunction or other equitable process, which may be granted by any other judge or officer, unless the same has been made to such other judge or officer and refused by him.

Refusal to grant injunction to be indorsed on the bill.

§ 2978. When an application for an injunction is refused, the officer to whom the same is made, must indorse his refusal on the bill and sign his name thereto; and any one erasing such indorsement, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than five hundred dollars.

On dissolution of injunction damages granted for delay.

§ 2979. Whenever an injunction to stay proceedings in an action is dissolved, on a final hearing, the chancellor may decree six per centum damages on the amount of money for which such judgment was enjoined, if of opinion that the injunction was obtained for delay.

Effect of bond on dissolution of injunction of a judgment.

§ 2980. A bond to enjoin proceedings at law on a judgment for money, upon the dissolution thereof, in whole or in part, either upon an interlocutory or final decree, has the force and effect of a judgment; and being certified by the register to the clerk of the court in which the judgment was rendered, execution may issue against any or all the obligors thereto, for the amount of such judgment which has been enjoined, interest and the damages decreed.

Execution on such bonds.

Execution for costs.

§ 2981. The register may also issue execution for costs, if decreed against the party obtaining the injunction, against any or all the parties to the bond.

If injunction of a judgment is dissolved pending the suit, refunding bond required.

§ 2982. Whenever an interlocutory decree is made dissolving an injunction to stay proceedings on a judgment at law, the chancellor must require of the defendant a refunding bond, in double the amount of the sum enjoined, payable to and to be approved by the register, conditioned to refund the money and interest he may collect on the judgment, if the same is on the final hearing of the bill perpetually enjoined; and the court may render a final decree on such bond against any or all the parties thereto.

Motion to dissolve in vacation.

§ 2983. A defendant may move to dissolve an injunction in vacation, before the chancellor of the division in which the bill is filed, either for want of equity or on the coming in of the answer, to be heard on certified copies of the bill and answer; but ten days' notice of such application must be given to the plaintiff or his solicitor.

Appeals may be taken to the supreme court on such orders.

§ 2984. An appeal lies to the supreme court on all interlocutory orders, in term time or vacation, dissolving injunctions, which must be heard and determined at the first term after the appeal is taken.

Notice of injunction to stay a judgment served on the attorney is valid.

§ 2985. Notices of injunctions, or other restraining process, staying proceedings in suits or on judgments at law, served upon the attorney of the party on whom such injunction or process is to operate, are valid.

§ 2986. Receivers can only be appointed by the chancellor, and when the application is made in vacation, reasonable notice of the time of such application, and the person to whom it will be submitted, must be given, or a good reason shown to the chancellor for the failure to give the same. Receivers appointed by chancellor.

CHAPTER VIII.

CREDITORS' BILLS.

SEC.	
2987.	Creditors' bills, when and by whom filed.
2988.	Bills for discovery of fraudulent conveyances or collusive judgments.
2989.	Answers to such bills compelled.
2990.	Answers not evidence on an indictment for fraud.

§ 2987. When an execution for money from any court has been issued against a defendant, and is not satisfied, the plaintiff, or the person for whose benefit such execution is sued out, may file a bill in chancery against such defendant, to compel the discovery of any property belonging to him, or held in trust for him; and to prevent the transfer, payment, or delivery thereof to such defendant, except when the trust has been created by or proceeded from some other person than the defendant himself; and the court may bring any other party before it, and decree such property, or the interest of the defendant therein, to the satisfaction of the sum due the plaintiff. Creditors' bills to enforce collection of judgments.

§ 2988. A bill for discovery may be filed, and the defendant compelled to answer such bill, where the defendant is charged with having confessed or suffered a judgment, where no portion, or a part only of such judgment is due, with the intent to hinder, delay, or defraud creditors, or with having conveyed his property with the like intent. Bill for discovery of collusive judgments or fraudulent conveyances

§ 2989. A defendant may be compelled to answer a bill in chancery, charging him with any fraud affecting the rights or property of others. Answers to such bills compelled.

§ 2990. No answer made to a bill under the provisions of the two preceding sections can be read in evidence against the defendant, on an indictment for any fraud charged in the bill. Not evidence on indictment for fraud.

CHAPTER IX.

OF THE RESIGNATION, DEATH, AND REMOVAL OF TRUSTEES.

SEC.
2991. Trustee may resign on application to the register.
2992. Notice of the application by advertisement.
2993. Trustee to account and settle before resignation.
2994. Payments are valid, but the accounts only conclusive against the trustee.
2995. New trustee appointed. Bond, if necessary.
2996. On death of trustee, register appoints another. Bond in such cases.
2997. Notice of the application to appoint.
2998. Guardians for infants in such cases.
2999. Causes of removal of trustee, on petition, &c., to the chancery court.
3000. New trustee appointed by the court in such cases.

Resignation of trustee.

§ 2991. When any express trust is created by will or deed, the trustee may resign on application to the register of the district where the trust property, or the most valuable portion of the same, is, or of the district in which the trustee resided when he was appointed trustee.

Notice of the application.

§ 2992. Notice of such application must be given in such paper as the register may direct, for six successive weeks.

Trustee to account and settle before resignation.

§ 2993. The trustee must render a full account, and pay over to the parties entitled to the same, or to the register, all moneys due by him.

Such accounts not conclusive.

§ 2994. No account so taken, is conclusive on any of the parties interested in the trust; but the trustee may be required to account up to the time of granting the application, in the same manner as if no proceedings had been had; except that he is entitled to the benefit of all payments made by him under the provisions of the preceding section.

Payments under them are valid.

New trustee appointed.

Bond if necessary.

§ 2995. The register, on the granting of such application, may appoint a trustee, and, if necessary to protect the parties interested in the trust property, may require the necessary bond of such trustee.

On death of trustee register appoints another.

§ 2996. Upon the death of a trustee of such express trust, the register of the district in which the trust property, or the most valuable portion of the same, is, may, on the application of any party in interest, appoint a trustee, and may also require of him a bond, as under the preceding section.

Bond of such trustee.

Notice of application to appoint.

§ 2997. All the parties interested in such trust property must have ten days' personal notice of such application, or by publication for thirty days in such paper as the register may direct.

Guardians for infants, &c., in such cases.

§ 2998. In any proceeding to appoint a trustee before the register, he has authority, where minors or lunatics are interested, to appoint guardians for their defence, and to protect their interest.

Causes of removal of trustee on petition to the chancery court.

§ 2999. Upon the petition or bill of any person interested in the execution of a trust, the court of chancery may remove any trustee who has violated or threatened to violate his trust; who is insolvent, or whose insolvency there is

good reason to apprehend; who has removed from the state, or who, for any other cause, is an unsuitable person to execute the trust; or the court may require such bonds as will effectually protect the interest of the parties.

§ 3000. Such court has authority to appoint a new trustee in the place of a trustee removed, or may cause the trust to be executed by one of its own officers. New trustee in such cases

CHAPTER X.

OF ISSUES OUT OF CHANCERY.

SEC.
3001. Issues of fact tried by a jury before the chancellor or before any circuit court.
3002. Evidence in such trials. Parties examined.
3003. Proceedings to summon a jury before the chancellor to try such issues, &c.

§ 3001. Whenever it is necessary for any fact to be tried by a jury, the court must direct an issue to be made up, setting forth clearly the true question of fact to be tried; and such issue may be tried before the chancellor in any county in his division, or may be sent to a circuit court in the district for trial. Issues of fact tried by a jury before the chancellor or any circuit court.

§ 3002. Such issue must be tried upon the like evidence as a suit at law, together with such parts of the bill, answers, depositions, and other proceedings in the cause, as the court may order; and the court may also order the examination of the parties to the suit, allowing the other party to impeach or contradict such evidence. Evidence in such trials. Parties examined.

§ 3003. If such issue is to be tried before the chancellor, he may make the necessary order for a jury to be summoned, and witnesses to be subpœnaed by the register of the district in which the trial is to be had; and render judgments conditional, and absolute, as the law directs. Proceedings to try such issue before chancellor.

CHAPTER XI.

OF THE RENDITION, LIEN, EFFECT, AND ENFORCEMENT OF DECREES AND COSTS.

SEC.
3004. Rules as to liens and priority of decrees same as those applied to judgments.
3005. Decrees for conveyances, releases, &c., operate as such, and the court may order them to be executed by a commissioner.
3006. Decrees to be in writing, and rendered during the term; in difficult cases, decrees rendered in vacation.

SEC.
3007. Costs at the discretion of the chancellor.
3008. Decrees, &c., enforced by attachment or sequestration.
3009. Decrees for performance of some act to prescribe the time, &c.
3010. Attachment on affidavit of failure to perform.
3011. If attachment not executed, sequestration follows.
SEC.
3012. Decrees enforced by chancery writs or common law process.
3013. Return day of such process.
3014. Sheriff liable for failure to collect money, &c.
3015. Rules of the supreme court confirmed, and power to make rules extended.

Rules as to liens and priority of decrees same as those applicable to judgments.

§ 3004. Executions issued on decrees of a court of chancery for payment, or recovery of money, are liens upon real and personal property subject to execution, from their delivery to the officer, in the same manner, and to the same extent; and the rules as to the priority of liens from such court, are the same as in courts of law.

Decrees for conveyances, releases, &c., operate as such.

§ 3005. When a decree is made for a conveyance, release, or acquittance, and the party against whom the decree is made does not execute the same by the time specified in the decree, such decree operates in all respects as fully as if the conveyance, release, or acquittance was made. Or the court may decree, in default of the execution of such conveyance, release or acquittance, the same to be executed by a commissioner, in the name of the party; and the conveyance, release, or acquittance, when so executed, is as valid in all respects as if executed by the party.

Conveyances, &c., may be executed by a commissioner.

Decrees in writing during term.

§ 3006. The chancellor must, when practicable, render his decrees in writing during the session of the court at which the cause is heard; he may, however, in difficult causes, render a decree in vacation within six months after the hearing.

May be rendered in vacation.

Costs at the discretion of chancellor.

§ 3007. Costs may be apportioned at the discretion of the chancellor; and in all cases where costs are decreed against any party who has given security for the costs, execution may issue against such security.

Decrees, &c., enforced by attachment or sequestration.

§ 3008. Courts of chancery may also enforce their decrees, orders, and rules, by process of attachment, against the party or officer in contempt, or by process of sequestration against his property.

Decree for performance of an act to prescribe the terms, &c.

§ 3009. If a decree is for the execution of a conveyance, the delivery of deeds, or any other specified act, the decree must in all such cases prescribe the time within which such act is to be performed.

Attachment on affidavit of failure to perform such decree.

§ 3010. Upon an affidavit being filed with the register by the party entitled to have such act done, his agent or solicitor, stating that the decree of the court has not been performed, the register must issue an attachment against the delinquent party, upon which he may be arrested and committed to jail, until he performs such act, or he is discharged by a special order of the chancellor, extending the time for the performance; and if such act is not performed within the time as extended, another attachment may issue on the affidavit of the party, his agent or solicitor.

If attachment not executed sequestration issues.

§ 3011. Upon the issue of an attachment, if the delinquent cannot be found, a writ of sequestration may issue against the estate of such party to compel obedience to the decree.

The courts use chancery process and common law writs to enforce their decrees.

§ 3012. Courts of chancery are authorized to issue such process, mesne and final, as has been used in such courts; and all writs for the collection of money, to obtain the possession of land or personal property, in use in the common law courts, are to be adapted to the execution of decrees in the courts of chancery.

Return day of such process, &c.

§ 3013. Writs from the court of chancery for the collection of money, or to obtain the possession of lands or personal property, may be made returnable on the first Mondays of a month, to be specified in the writ. All other process as the chancellor or register may direct, unless the return is fixed by law.

Sheriff's liability for failure to collect money, &c.

§ 3014. For failing to collect money on any execution from the court of chancery, the sheriff and his securities, or any or either of them, are liable to the same penalties, to be recovered in the same manner as on failure to collect executions from the law courts. The motion to be made by the plaintiff, in the circuit court of the county in which the court from which the execution issues is held.

Rules of the supreme court recognized and power granted it to make new rules.

§ 3015. All the rules now in force, which have been adopted by the supreme court, not contrary to the provisions of this title, are recognized; and power is granted to such court to adopt such other rules to regulate the practice of the court of chancery, or such modifications of the existing rules as they may deem proper, and also to furnish forms of proceeding, to mould the process of the chancery court, and to prescribe rules of evidence in the same, from time to time, as experience may determine, that the existing rules do not fully meet the ends of public justice.

Title 5.

CHAPTER I.

OF APPEALS.

SEC.

3016. Appeals allowed to supreme court on all final judgments, as matter of right.
3017. Appeals taken by the state operates as supersedeas without bond.
3018. Adverse party to have notice of appeal.
3019. Appeal not to supersede execution without bond taken and approved.
3020. If decree before the performance of an act other than the payment of money, the chancellor fixes the bond.
3021. Liability for taking insufficient security on appeal bonds.
3022. Appellant to have a transcript of the record, and a certificate of the appeal citation.
3023. Penalty of bond on appeal of claimant in the trial of the right of property.

SEC.
3024. Damages when such judgment is affirmed.
3025. Party appealing from judgment of recovery of slaves, to give bond for their hire.
3026. On affirmance execution for the hire on motion.
3027. Damages on affirmance of judgment in detinue.
3028. Liability of the clerk for delay in furnishing a transcript, or for imperfection in the record.
3029. Certificate of appeal given appellee.
3030. Transcript to be filed in the supreme court in three days after court meets.
3031. Judgment affirmed on certificate if record is not filed.
3032. If a bond is filed, ten per cent. damages on affirmance.
SEC.
3033. Damages in all cases of money judgments.
3034. Judgment or decree if reversed, may be rendered or remanded by the court.
3035. Notice to appellee when non-resident.
3036. Confession of judgment releases errors.
3037. Clerical errors corrected at appellant's cost.
3038. On death of either party cause revived as to his representative,
3039. Appeals barred if not taken in two years.
3040. No appeal allowed without security for costs when no bond is given to supersede, &c.

Appeals from final judgment as matter of right to supreme court.

§ 3016. From any final judgment or decree of the chancery, circuit or probate courts, except in such cases as are otherwise directed by law, an appeal lies to the supreme court, for the examination thereof, as matter of right, on the application of either party, or their personal representatives, and the clerk, register, or judge of probate, must certify the fact, that such appeal was taken and the time when, as part of the record, which gives the supreme court jurisdiction of the case.

Appeals by the state.

§ 3017. When judgment has been rendered against the state, unless such judgment is final in favor of a citizen, the solicitor shall, if he thinks it proper, take an appeal to the supreme court, which operates as a supersedeas of the judgment, without bond and surety; but no damages can be given against the state on affirmance.

On appeal adverse party to have notice by citation.

§. 3018. The register, clerk of the circuit court, and judge of probate, must, on the application of either of the parties, their agent or attorney, after final judgment or decree in any cause, upon an appeal being taken, issue a citation returnable to the next term of the supreme court, to the opposite party, which must be served by the sheriff on him or his attorney, ten days before court, to which the appeal is taken.

Appeal not to supersede execution unless bond be taken and approved.

§ 3019. The appeal does not operate as a supersedeas of the judgment, unless bond be given by the appellant, in double the amount of the judgment, payable to the appellee, with sufficient sureties and with condition to prosecute the appeal to effect, and to satisfy such judgment as the supreme court may render in the premises.

If decree be for performance of an act besides payment of money the chancellor fixes bond.

§ 3020. When the decree rendered is for the performance of any other act than the payment of money, (except in cases otherwise provided by this code,) the party wishing to supersede the execution of such decree, must apply to the chancellor, or register, either in term time or vacation, who must direct the amount and the condition of the appeal bond.

Liability for taking insufficient security on appeal bonds.

§ 3021. For taking insufficient security the clerk, register, or judge of probate, is liable to the appellee for the damages thereby sustained, unless the surety was generally reputed good for the amount, when he was received; but the clerk, register, or judge of probate is not required to receive any one as surety, who refuses to answer on oath as to his sufficiency.

Transcript of record and certificate of appeal, citation, &c., to be delivered appellant.

§ 3022. The register, clerk, and judge of probate, must also, on the application of the appellant or his attorney, make and deliver to him, in time to be returned to the next term of the supreme court, a full and complete transcript of the record and proceedings in the cause, together with his certificate that the appeal was taken, and the time when, and the citation and a copy of the appeal bond if any was given, with his certificate, that it is a complete transcript of all the proceedings in the cause, and envelop and seal up the whole in a package directed to the clerk of the supreme court, or deliver it to the attorney applying for the same.

Penalty of bond when appeal is sued out by claimant in trial of right of property.

§ 3023. When an appeal is sued out by the claimant on a judgment against him on trial of right of property, and the party desires to supersede the judgment, the bond must be taken in double the amount of the plaintiff's judgment, if that with the interest is less than the valuation by the jury of the property levied on, and in double the amount of the assessed value, if less than the judgment of the plaintiff.

Damages when such judgment is affirmed.

§ 3024. When an appeal is taken by the claimant on the trial of the right of property, and the judgment superseded, if the appellate court affirms the judgment of the court below, it must render judgment for ten per cent. on the assessed value of such property, if less than the amount of the execution against the defendant; if such value exceeds such execution, ten per cent. on the amount thereof against the obligors in the appeal bond.

Party appealing from judgment of recovery of slaves to give bond for their hire.

§ 3025. When a judgment is rendered for the recovery of slaves in specie, or the alternate value, if the party prosecuting an appeal has possession of the slaves, he must, if he desires to supersede the judgment, in addition to the condition of the bond required in other cases, stipulate to pay hire for the slaves from the rendition of such judgment, and pending the appeal, if he fail to prosecute the same to effect.

Motion for execution for the hire on affirmance.

§ 3026. Upon the affirmance of such judgment by the supreme court, the hire of such slaves may be recovered by motion in the circuit court, where the judgment was rendered, against all the obligors in the bond, three days' notice being given thereof.

Damages on affirmance of judgments in detinue.

§ 3027. Upon the affirmance of an appeal on a judgment for the recovery of chattels in specie, which has been superseded, the court must render judgment for ten per cent. damages upon the assessed value of the chattels, and upon the damages on the detention thereof; but the damages on such assessed value must not be collected if the chattels were slaves, and delivered to the sheriff within thirty days after the receipt of the certificate of affirmance by the clerk.

Liability of the clerk for delay in furnishing the transcript, &c.

§ 3028. If by reason of negligence, or delay of the clerk, the transcript be not delivered to the appellant or his attorney, in time to be filed, or if the transcript be so defective that the supreme court cannot proceed thereon, the clerk forfeits to the party aggrieved the sum of two hundred dollars, and is further liable to him, in an action on the case, for all damages sustained by his neglect or delay.

For imperfection of the record.

Certificate of appeal to be given appellee; its contents.

§ 3029. When an appeal is taken, the clerk, register, or judge of probate, must, on the application of the appellee, make and deliver to him a certificate of the judgment or decree upon which the appeal has been taken, specifying particularly the judgment or decree, the amount of the same if for money, the parties thereto, and when rendered, and that an appeal has been taken thereon, with a statement of the obligors in the bond to supersede the judgment or decree, if one has been given.

Transcript to be filed with clerk of the supreme court by the third day of the term.

§ 3030. The transcript of the record and the certificate must be filed with the clerk of the supreme court, on or before the third day of the term to which the appeal is taken, and the cause must be tried at the first term, unless good cause be shown for a continuance. If the citation has not been executed on the appellee ten days before the commencement of the court, the cause will not stand for trial until the next succeeding term.

Judgment affirmed on certificate if the record be not filed, &c.

§ 3031. If an appeal is taken, and the transcript of the record is not filed within the first three days of the court, it is the duty of the court, on the motion of the appellee, to affirm the judgment or decree of the court below, upon the production by him of the certificate of the register, clerk, or judge of the probate court, that an appeal has been taken to the supreme court. For good cause shown, the court may reinstate the cause during the term, on payment of costs.

On affirmance ten per cent. damages given if a bond was filed.

§ 3032. When bond with surety has been executed on an appeal, and the judgment thereby suspended, if the supreme court affirms the judgment of the court below, it must also render judgment against all or any of the obligors in the bond, for the amount of the affirmed judgment, ten per cent. damages thereon, and the costs of the supreme court.

Damages in all cases of money judgments.

§ 3033. The preceding section applies to all cases where a judgment or decree is rendered for money, whether debt or damages.

Judgment or decree may be reversed and remanded or rendered.

§ 3034. The supreme court may, upon the reversal of any judgment or decree, remand the same for further proceedings, or render such judgment or decree as the court below should have rendered, when the record enables them to do so.

Notice of appeal to appellee when he is a non-resident.

§ 3035. When the appellee is a non-resident, and has no attorney or agent within the state to receive notice of the appeal, oath in writing being made of the fact, the supreme court may direct notice to be given by publication, which is as effectual as actual notice.

Confession of judgment releases errors.

§ 3036. A confession of judgment is in law a release of errors.

Clerical errors corrected at appellant's cost.

§ 3037. No cause must be reversed by the supreme court for any miscalculation of interest, or other clerical mistake in entering judgment, but on motion of, and at the costs of the appellant.

On the death of either party cause revived as to his representative.

§ 3038. Upon the death of either party to an appeal being suggested, if the cause cannot proceed without new parties, the cause may be revived, either for or against such party, on the production of letters testamentary, or of administration; but citation must issue from the appellate court to all who are thus made defendants, unless they appear and waive it.

Appeal on death of either party after judgment, &c.

§ 3039. When either party to a judgment or decree dies after judgment or decree rendered, and before appeal taken thereon, an appeal may be prosecuted, in the name of, or against the legal representative of the deceased, on producing satisfactory evidence to the clerk, judge of probate, or register, of the death of the party, and grant of letters testamentary, or of administration.

Appeals to be taken in two years.

§ 3040. Appeals under this title, except in such cases as a different time is prescribed, must be taken within two years from the rendition of the judgment or decree; but the provisions of this section do not apply to existing judgments or decrees.

Security for costs required in all cases when appeal bond is not given.

§ 3041. No appeal can be taken without giving bond to supersede the execution of the judgment or decree, unless the appellant give security for the costs of such appeal, to be approved by the clerk, register, or judge of probate; the names of such securities to be certified with the record to the appellate court, and execution may issue against such securities for the costs in such court, and the costs of the transcript, if decided against the appellant.

Title 6.

FEES IN CIVIL CASES.

CHAPTER I.

FEES OF CLERKS OF THE CIRCUIT AND SUPREME COURTS, JUDGES OF PROBATE, REGISTERS IN CHANCERY, SHERIFFS AND CORONERS, ATTORNEYS AT LAW, JUSTICES OF THE PEACE AND CONSTABLES.

§ 3042. Clerks, sheriffs, and other officers hereinafter named, are entitled to receive for the services hereinafter mentioned, the fees thereto respectively annexed, and no more, to be paid, taxed, and collected in the manner hereinafter directed.

Clerk of the circuit court.

§ 3043. Clerks of circuit court:

For every summons and complaint	$ 1 00
Each copy thereof	20
When the complaint is over two hundred words, for each copy, for each hundred words	10
Entering a sheriff's return, or copy thereof	15
Docketing cause, to be charged but once	15
Entering appearance	15
Filing pleas, demurrer, or other pleadings, for each	5
For every order made in court, not otherwise provided for	25
For copy thereof	20
For every jury trial, swearing jury and witnesses	1 00
For entering up judgment, or copy thereof	20
For scire facias, or notice in the nature thereof	50
For every execution and recording return	50
For copy thereof	25
For recording the award of arbitrators, receivers, auditors, &c., for every hundred words	15
For issuing attachment thereon	20
For taking bond for certiorari, supersedeas, or appeal.	50
For copy thereof	20
For filing such bond	10
For issuing subpœna for a witness or witnesses	25
For administering an oath in court, not relating to the trial of a suit then pending, and certifying the same	25
For filing attachment	10
For each summons for garnishee or garnishees on such attachment	20
For swearing and taking the examination of garnishee, and entering the same of record	50
Or for each hundred words	15
For order to advertise, or order of survey, and copy thereof	40
For recording each survey in a surveyor's report, with its references	25
For each copy thereof, for every hundred words	15
For commission to take depositions	50
For copy of interrogatories accompanying such commission, for every hundred words	15
For filing each deposition	15
For writ of ad quod damnum, or writ in the nature thereof	50
For recording the return, and inquest thereon, for every hundred words	15
For writ of certiorari, prohibition, mandamus, or writ in the nature thereof	50
For filing the same, and return	10
For making a complete record of a cause after final judgment, with certificate, or copy thereof, for every hundred words	15

For copy of any paper not herein otherwise provided for, for every hundred words	$ 0	15
For a search, out of term time, for any thing above a year's standing, when no copy is required		15
For every certificate to which the seal of office is required, and affixing seal		50
For taking any and every bond		50
For necessary certificate, not otherwise provided for, or a copy thereof		15
For every order, or continuance in court		5
For all other official duties for which no express provision is made by law, to be paid from the county treasury, such sum as may be allowed by the court of county commissioners for such services, not exceeding	150	00

§ 3044. Registers in chancery:

Registers in chancery.

For each subpœna on a bill	$ 0	50
For any other subpœna		25
For entering each return thereof		10
For entering each decree		75
For copy of bill or answer, for every hundred words		15
For each report	2	50
For taking an account, swearing witnesses, &c., for each day whilst engaged therein	3	00
For taking every bond	1	00
For appointing trustee, and recording resignation, removal, or death	1	00
For issuing each notice		25
For making abstract of bill for publication, for every hundred words in abstract		20
For each execution, or order of sale		75
For making a complete record, for every hundred words, and certificate, or copy thereof		15
For making a deed to property sold	2	00
For each certificate, and official seal		25
For each paper or record not included in the above, for every hundred words recorded or copied		15

Commissions on sales: for the first hundred dollars, two per cent.; for all over one hundred dollars and under one thousand dollars, one per cent.; for all over one thousand dollars, one-half of one per cent.; which commissions must be calculated upon the amount for which the property sold.

For services rendered in the settlement of estates for decedents, transferred under the provisions of section 1910, the same fees as judges of probate.

For all other services for which no compensation is herein specifically provided, such fees or compensation as the chancellor may direct.

§ 3045. Clerk of the supreme court:

Clerk of supreme court.

The clerk of the supreme court is entitled to double the

fees allowed by law for like services to the clerk of the circuit court.*

Probate judges.

§ 3046. Probate judges:

For all orders, on presenting a will for probate	$ 0 50
For examination of witnesses, and order admitting will to record	1 00
For presiding on the trial of a contested will, or other jury trial	2 00
For granting letters testamentary, or of administration	1 00
For taking, approving, and recording bond, and entering order of appraisement	1 00
For granting order of appraisement or sale	50
For issuing copy of appraisement or sale	25
For order to record inventory, appraisement and sale, each	25
For order removing executor, administrator or guardian	2 00
For granting and issuing letters of guardianship, taking, approving, and recording bond	1 50
For order appointing commissioners to divide real or personal estate, and for issuing writ to the sheriff	1 00
For approving and entering order thereon	50
For order, on petition to sell real estate, appointing a day for hearing, and orders for notices	1 00
For appointing guardians ad litem for the sale of land, and giving notice to such guardian	1 00
For examining testimony, and making decree to sell land	2 00
For order approving sale and recording same	50
For hearing application for dower, issuing writ, entering all necessary orders, and allotting dower	2 50
For examining, stating, and reporting the accounts of executors, administrators, and guardians, for settlement, order appointing guardians ad litem, day	

* The clerk of the supreme court is entitled to the following fees, under the act of 1851-2:

For docketing cause	25 cents.
Entering attorney	25 "
Filing transcript	50 "
Writ of error	25 "
Bond	25 "
Citation	75 "
Argument and joinder	50 "
Briefs	50 "
Order	25 "
Continuance	10 "
Scire facias	50 "
Certiorari	50 "
Filing the same, with return	10 "
Entering judgment	75 "
Certificate to clerk of court below	50 "
Copy of opinion of court, for each hundred words	10 "
Execution	65 "
Taxing courts (costs) and entering satisfaction	80 "
For binding up records, &c., in each case	50 "

for hearing, and copy for publication	$ 2 00	Probate judges.
For examining vouchers, allowing or rejecting, each	5	
For making decrees on annual or partial settlements, and order to record	1 00	
For making all entries except decrees, on final settlements, and order to record	2 00	
For each decree	25	
For entering all necessary orders in relation to insolvent estates, each order	15	
For issuing all writs, citations, or notice required to be issued in pursuance of law, and entering sheriff's return thereon	50	
For filing each claim in office, and giving receipt therefor, to be paid by the person filing the claim	10	
For approving every bond, except those of executors, administrators, and guardians	50	
For taking bonds, except in cases hereinbefore provided for	50	
For recording wills, inventories, appraisements, sale bills, reports, decrees, &c., for every hundred words	15	
For recording conveyances, for every hundred words	15	
For each certificate, with the seal of office	50	
For each certificate of acknowledgment of a deed, or relinquishment of dower	50	
For granting retail licenses, and filing oath	2 00	
For each other license, not otherwise provided for.	1 00	
For order binding out an apprentice, and copy thereof	1 00	
For each commission to take depositions	50	
For administering and certifying oaths, not herein provided for	25	
For presiding in the commissioners' court, per day	2 00	

But half the rate of fees allowed the judge of probate upon the estates of decedents, must be charged by him, when the estate is shown by appraisement, or on settlement, to be of less value than two hundred dollars.

For all other official duties for the compensation of which no express provision is made by law, such sum as may be allowed by the court of county commissioners for such services, to be paid out of the country treasury, not exceeding $150 00

§ 3047. Sheriffs:

For levying an attachment	1 50	Fees to sheriffs.
For summoning garnishee	1 00	
For selling property attached, the same as for selling on a fieri facias.		
For serving a summons, or other mesne process	1 00	
For returning summons, or other mesne process, in the sheriff's office	15	
For taking bail bond, and returning the same	1 00	
For summoning each witness	50	

Fees of sheriffs.

For empanelling a jury, in each case where a jury is sworn ..... $ 50
For executing a habere facias possessionem 2 00
For making a deed to purchase of real estate sold, or executed 2 00
For committing a prisoner to jail, or release 50
For levying fieri facias, and making money thereon; for the first hundred dollars, five per cent.; for all sums over one hundred dollars, and not exceeding two hundred dollars, four per cent.; for all sums over two hundred dollars, two and one half per cent.: but no commissions are to be charged on costs.
For levying a fieri facias, when sale is stayed after levy, by any restraining order, one per cent. on the amount of the judgment, to be paid by the person obtaining such order, and to be taxed for his benefit if successful, against the adverse party, on the determination of the suit.
For collecting execution for costs only ..... $ 1 00
For taking defendant on ca. sa., and commitment .. 1 00
For making money on ca. sa., the same commissions as are allowed on fieri facias.
For executing a condemned person, and all incidents thereto, to be paid by the county 10 00
For summoning a jury for any inquisition in the county, and attending on said jury, and taking inquests, per day, when no other provision is made by law 3 00
For serving subpœnas in chancery, for each defendant 1 00
Returning the same 15
For serving scire facias, or notice in nature thereof, on each defendant 50
For serving any summons not herein provided for .. 50
For serving an attachment for contempt, and returning the same, or rule to show cause 1 00
For victualling a runaway slave in jail, per day 25
For advertising such slave 1 00
For taking bonds of every kind 50
For empannelling grand juries, advertising, and attending all elections, serving all public orders, of all courts in his county, and for all other public services, not otherwise provided for by law, such sum as may be allowed by the commissioners' court, to be paid out of the county treasury, not to exceed 150 00
No fee is allowed for the service of a scire facias, or notice in nature of, against defaulting jurors or witnesses, when the same are excused by the court.

To attorneys.

§ 3048. Attorneys at law: For prosecuting a suit in the circuit court, when defence is made:
When judgment is rendered for two hundred dollars, or less ..... $ 4 00

To attorneys.

When judgment is rendered for more than two hundred, and less than five hundred dollars..... $ 6 00
When judgment is rendered for five hundred dollars, and less than one thousand dollars..... 8 00
When judgment is rendered for one thousand dollars, or more..... 10 00
To the defendant's attorney, in each case when successful..... 5 00
For prosecuting or defending a mixed or real action, where the title or bounds of land are in question 20 00
For prosecuting or defending a suit in the supreme court..... 15 00
For like services in the chancery courts..... 15 00

The fees hereby allowed must be taxed against the party in the suit, liable therefor, in favor of the other party, for the benefit of the attorney. But not more than one attorney's fee must be taxed, in any cause, except in cases otherwise provided by this code, and suits in chancery, when defendants are improperly made parties.

Justices of the peace.

§ 3049. Justices of the peace: to be taxed against and collected out of the unsuccessful party:

For a summons in civil cases, and proceedings thereon to judgment..... $ 0 50
For a warrant in qui tam cases, and proceedings thereon to judgment..... 75
For subpœna for a witness, or witnesses..... 15
For execution, and taxing costs thereon..... 40
For attachment, bond, and affidavit..... 1 25
For summons for garnishee, and taking examination 50
For judgment, and order of sale on attachment.... 25
For each appeal, or certiorari, including bond, and certifying proceedings..... 1 00
For every other bond..... 50
For administering an oath, and certifying the same. 15
For taking depositions under a commission, for every hundred words..... 15
For every necessary certificate, not otherwise provided for by law..... 25
For docketing each cause..... 5
For each judgment on forthcoming, stay, or replevin bonds..... 25
For each judgment, on a summary proceeding..... 50
For a transcript of proceedings, other than those sent up on an appeal..... 25
For issuing a venire facias..... 50
For attending on the trial of right of property..... 1 00
For each scire facias, or notice in the nature thereof 25
For making return of certiorari, other than in cases of forcible entry and detainer..... 50
In cases of forcible entry and detainer, and unlawful detainer:
For every summons..... 50

For swearing the jury	$ 0 20
For administering every oath, or affirmation	5
For entering verdict	15
For entering judgment	15
For presiding on every trial	2 00
For issuing writ of restitution	25
For return on appeal, or certiorari	1 00

Constables.

§ 3050. Constables:

For serving a summons in civil cases	50
For summoning each witness	25
For levying an attachment	75
For levying an execution	50
For making money on each execution	50
For carrying a debtor to jail	50
For whipping a slave, by order of a justice of the peace, to be paid by the owner	1 00
For serving notice, on each person therein named	25
For serving scire facias, or notice in nature of	50
For taking bail bond, bond for the forthcoming of property, or other bond required by law	50

For keeping property levied on, such sum as the justice believes just and reasonable, out of the money in the hands of such constable, arising from the sale of such property, or received by reason of such levy.

Any other services performed by any justice or constable, for which no fee is allowed by law, must be considered ex officio, and no fee demanded or received therefor.

CHAPTER II.

GENERAL RULES.

SEC.

3051. Clerks and sheriffs to keep fee books, and enter every item; clerk's fee book an office book.
3052. Fee books to have index.
3053. No fee to be charged not entered in the fee book.
3054. Fees not due till bill of items presented.
3055. Sheriff's commissions not due till levy actually made and money collected, and paid to plaintiff, and then on the amount so paid.
3056. On stay of execution after levy, half commissions paid.
3057. Fees except for final record, not due till service performed.
3058. Bill of fees to be made out on request; no charge for taxing costs.
3059. Quadruple damages for excessive charge.
3060. On "no property" being returned as to defendant, execution against plaintiff for his costs; penalty for failure to collect them over such costs.
3061. Copy of costs bill to be annexed to execution.
3062. No commissions charged on costs.
3063. No fee to be charged unless expressly authorized.
3064. Fee bills of officers to be posted in their offices.
3065. Penalty for failure to post such bills.
3066. Judge of probate forfeits fifty dollars, by charge of extra fee, and indictable for extortion.
3067. Judge of probate to keep a book showing all fees received, &c.
3068. Solicitor and grand jury to examine fee books and present offences.

§ 3051. The clerks and sheriffs must keep a fee book, which must be considered in case of the clerk, one of the books belonging to his office; he must enter therein in a regular account, to be opened for that purpose, every fee for each and every distinct service rendered by him, charging for every particular item in the same manner as the fees aforesaid. Fee books kept by clerks and sheriffs; clerk's fee book is an office book.

§ 3052. There must be an index made to such book, pointing to the folio in which the respective accounts are contained. Index made to fee books.

§ 3053. No clerk or sheriff is allowed to take or demand any fee for any service by him performed, which is not justified by the charge made, and entered in his fee book. No compensation permitted which is not justified by the charge in the fee book.

§ 3054. None of the foregoing fees are payable until the person charged with the payment thereof, is furnished with a bill in writing, setting out each item in the bill, and the services for which the same is due, signed by the clerk. Fees not due until bill of particulars is indorsed.

§ 3055. Sheriffs and coroners are not entitled to full commissions, except in cases where the execution has been actually levied on the property of the defendant, and the money made, or paid to the plaintiff in execution, and then only on the amount actually collected or paid. Sheriff's commissions; when due and on what sum.

§ 3056. Where the sheriff or coroner has levied execution, and before sale, the same is stayed by order of the plaintiff, they must receive half commissions only, on the amount of the execution. On stay of execution after levy half commissions only.

§ 3057. No officer entitled to fees under this title, must demand or receive the same, or any part thereof, until the duty or service for which they are granted is performed, except making the final record. Fees, except for final record, not due till the service is performed.

§ 3058. The clerks of the circuit courts, probate judges, registers in chancery, and all other officers, entitled to fees under any law now in force, must on demand make out a bill of fees and costs, stating each item distinctly, and in no case must a fee be charged by any officer for taxing costs, or a copy thereof. Bill of fees to be made out on request. No charge made for taxing costs, &c.

§ 3059. If any of the officers herein mentioned, knowingly receive any other or higher fees than are prescribed by law, he is liable to the party aggrieved for four fold the fees so received, to be recovered in any court of competent jurisdiction. Penalty for extortion.

§ 3060. The clerk of the supreme court, clerks of the circuit court, judges of probate, and justices of the peace, upon the non-payment of the costs due by the defendant, upon the return of an execution against such defendant by the sheriff of the county in which the judgment was rendered, or if the execution be from the supreme court, of the county from which the case was brought, "no property," may issue execution in their own name against the plaintiff for the costs actually created by such plaintiff, and no other; which execution must be collected and returned as other executions; and for failing to return, collect with due diligence, or pay On return of no property on execution against defendant clerk issues execution against plaintiff for costs incurred by him.

over on demand to the clerk of the circuit court, or the judge of probate issuing the same, judgment may be rendered on motion in the circuit court of the county, and in the name of such clerk or judge of probate, against the sheriff so failing, and his securities, or either of them, having three days' notice of the motion; for failing to return, twenty per cent. on the amount of the execution; for failing to collect, the amount of the execution and ten per cent. damages; and for failing to pay over, the amount of said execution and five per cent. damages, for each month after demand made.

Penalty for failure to collect or pay over such costs.

Copy of the bill of costs to be annexed to execution.

§ 3061. To such execution must be annexed a copy of the bill of costs. of the fees on which such execution issues; and all executions issuing without such copy of the bill of costs, must be deemed illegal, and no sheriff must serve or execute the same.

Commissions not to be charged on costs.

§ 3062. It is not lawful for any sheriff, coroner, or constable, to collect commissions on the costs taxed on any execution put in their hands, but must only demand and collect the commissions allowed by law, on the principal, damages and interest.

No fee taken unless expressly provided by law.

§ 3063. The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law.

Fee bills of officers to be posted in their offices.

§ 3064. It is the duty of the several clerks of the circuit courts, and judges of the probate courts, to have and keep posted up in a conspicuous place in their respective offices, a complete list of all the fees allowed by law to them, and to the sheriffs; and must also keep a copy ready to be produced, on the application of any person wishing to see the same.

Penalty for failure to post such bills.

§ 3065. On failing to comply with the preceding section, such clerk or judge of probate so failing, is not authorized to receive or collect any fee for any services rendered during the time of such failure.

Forfeiture of fifty dollars for charge of extra fee by judge of probate. Indictment for extortion.

§ 3066. Any judge of probate receiving any other or greater fees than are allowed by law, forfeits the sum of fifty dollars, to be recovered in the name of the person paying the same. And if recovered by any executor, administrator, or guardian, is assets of the estate, and must be accounted for as such; but this remedy is no bar to an indictment for extortion.

Book of fees recorded to be kept by judge of probate open for inspection.

§ 3067. The judges of probate must keep constantly in their office, free to the inspection of all persons, a book, in which must be entered all the fees they have received by virtue of their office, stating from whom and for what received.

Solicitor and grand jury to examine fee book and present offences.

§ 3068. It is the duty of the solicitor and grand jury, at every term of the circuit court, to examine such book and ascertain if illegal fees have been corruptly received; and in such case, such judge must be indicted therefor, and, on conviction, fined not less than one hundred, nor more than five hundred dollars, and be dismissed from office.

Title 7.

SCHEDULE OF FORMS OF PLEADING IN CIVIL PROCEEDINGS.

CHAPTER I.

FORMS.

Complaints.

Endorsee against acceptor of bill of exchange.

A. B., plaintiff, *vs.* C. D., defendant, } The plaintiff claims of the defendant —— dollars, due on a bill of exchange, which was drawn by one E. F., on the —— day of ——, for —— dollars, upon the defendant, and accepted by him, payable to one G. H., on the —— day of ——, which bill before maturity was indorsed to the plaintiff, and with interest is still due, and unpaid.

I. J., Att'y for Pl'ff.

Endorsee against endorser.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant, —— dollars on a bill of exchange, drawn by E. F., on the —— day of ——, upon G. H. for the payment of —— dollars on the —— day of ——to the defendant, by whom the said bill was indorsed to the plaintiff, and the said bill not being paid at maturity (or not being accepted, as the case may be,) was duly protested, of which the defendant had due notice. The said bill, with damages, and interest due thereon, is still unpaid.

L. M., Att'y for Pl'ff.

Endorsee against drawer.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant, ——dollars, due on a bill of exchange, drawn by him on the —— day of ——, on E. F., for the payment of —— dollars to G. H., on the ——day of ——, by whom the said bill was indorsed to the plaintiff, and the said bill not being paid at maturity, (or not being accepted, as the case may be,) was duly protested, of which the defendant had due notice. The said bill, with the damages and interest due thereon, is still unpaid.

J. J., Att'y for Pl'ff.

NOTE.—If the bill sued on was a foreign bill of exchange, the fact should be stated, and the place on which it was drawn.

On promissory note by payee, against maker.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant ——dollars, due by promisory note made by him on the —— day of ——, and payable the —— day of ——, with interest thereon.

E. F., Att'y for Pl'ff.

On bill single or bond without penalty by obligee against obligor.

A. B., plaintiff. *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, due by bond, executed by him on the —— day of ——, payable on the —— day of ——, with interest due thereon.

E. F., Att'y for Pl'ff.

By assignee, against assignor, on assigned note or bond without penalty.

A. B., plaintiff, *vs.* C. D., defendant, } The plaintiff claims of the defendant the sum of —— dollars, as the assignee of a note (or bond, as the case may be,) executed on the —— day of, —— by one E. F., payable to the defendant (or as the case may be) on the —— day of ——, and assigned to the plaintiff, upon which suit has been brought according to law to charge the maker, judgment obtained thereon, execution issued according to law, and returned "no property found," which note with the interest thereon is still unpaid.

G. H., Att'y for Pl'ff.

NOTE.—If there is a sufficient excuse for not suing the maker, the fact should be concisely stated.

On an account or verbal contract.

A. B., plaintiff, *vs.* C. D., defendant, } The plaintiff claims of the defendant, —— dollars, due from him by account, on the —— day of ——, (or for money loaned by the plaintiff to the defendant on the —— day of ——, or on account stated between the plaintiff and defendant, on the —— day of ——, or for merchandise, goods and chattels, sold by the plaintiff to the defendant on the —— day of ——, or for money paid by the plaintiff, for the defendant, at his request, or for work and labor done for the defendant, by the plaintiff, on the —— day of ——, at his request,) which several sums of money, (or sum of money) with the interest thereon, are now due.

E. F., Att'y for Pl'ff.

On an account or verbal contract by a transferee.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant, —— dollars, due by account, for money loaned by one E. F., to the defendant, on the —— day of ——, (or on an account stated between the defendant and one E. F., on the —— day of ——, or for merchandise, goods and chattels sold by one E. F., to the defendant, or for money paid by one E. F. for the defendand, or for work and labor done by one E. F. for the defendant, on the —— day of ——, at his request;) which sum (or sums of money, as the case may be,) with the interest, is now due, and is the property of the plaintiff.

G. H., Att'y for Pl'ff.

For the recovery of chattels in specie.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant, the following slaves, (or other personal property, viz: &c., describing it,) with the

value of the hire or use thereof, during the detention, viz: from the —— day of ——.

E. F., Att'y for Pl'ff.

On an independent covenant or agreement.

A. B., plaintiff, *vs.* C. D., defendant, } The plaintiff claims of the defendant, —— dollars, damages for the breach of a covenant, (or agreement, as the case may be,) entered into by him on the —— day of ——, by which he promised, (here set out the contract or agreement, and the breach complained of.)

E. F., Att'y for Pl'ff.

NOTE.—If a demand is necessary to entitle the plaintiff to his action, it must be averred.

On a dependent covenant or agreement.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant, —— dollars, for the breach of a covenant (or agreement, as the case may be,) entered into by him on the —— day of ——, in substance as follows: (here insert a copy or according to its legal effect,) yet although the plaintiff has complied with all its provisions on his part, the defendant has failed to comply with the following provisions thereof, viz: (here insert the matter complained of.)

E. F., Att'y for Pl'ff.

On bonds with condition.

A. B., plaintiff, *vs.* C. D., defendant, } The plaintiff claims of the defendant —— dollars, for the breach of the condition of a bond (or agreement) made by the defendant on the —— day of ——, payable to the plaintiff, in the sum of —— dollars, with condition, (here state the condition concisely.) And the plaintiff says the condition of said bond has been broken by the defendant in this, (here state concisely the breach or breaches complained of, first, second, &c.,) to the damage of the plaintiff, as above stated.

E. F., Att'y for Pl'ff.

Against a common carrier.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages for the failure to deliver certain goods, viz: (here set them out,) received by him as a common carrier, to be delivered to the plaintiff at ——, for a reward, which he failed to do.

E. F., Att'y for Pl'ff.

NOTE.—If the injury complained of is the failure to deliver the goods by the time stipulated, or within a reasonable time, or for damage to the goods, it should be so stated.

Deceit in sale of chattels.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages for a deceit in the sale of a horse, which the defendant, at the time of the sale, knew to be unsound.

E. F., Att'y for Pl'ff.

Action on a warranty.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars as damages for a breach of warranty in the sale of a slave by him to the plaintiff, on the —— day of ——, which the defendant warranted to be sound in body and mind, when in fact the said slave was, at the time of the sale and warranty, unsound in body, (the warranty and breach to be stated according to the facts.)

E. F., Att'y for Pl'ff.

On a policy of insurance.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, the value of certain goods, which the defendant, on the —— day of ——, insured against loss or injury, against perils of the seas, and other perils in said policy mentioned, from the port of New-York to the port of Mobile, on board the ship Neptune, which goods were wholly lost by the shipwreck of the said vessel, on her voyage, of which the defendant has had notice.

E. F., Att'y for Pl'ff.

For the conversion of chattels.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant, —— dollars, as damages for the conversion by him, on the —— day of ——, of the following chattels, (describing them) the property of the plaintiff.

E. F., Att'y for Pl'ff.

For assault and battery.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— damages, for an assault and battery committed by the defendant on the plaintiff, viz: on the —— day of ——.

E. F., Att'y for Pl'ff.

For false imprisonment.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages for maliciously, and without probable cause therefor, arresting and imprisoning, (or, if the case be so, causing the defendant to be arrested and imprisoned,) on a charge of larceny, (or other felony, as the case may be,) for —— days, viz: on —— day of ——.

E. F., Att'y for Pl'ff.

Verbal slander.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages for falsely and maliciously charging the plaintiff with perjury, (larceny, or other crime, as the case may be,) by speaking of and concerning him, in the presence of divers persons, in substance as follows, (here set out the defamatory language,) viz: on the —— day of ——.

E. F., Att'y for Pl'ff.

Libel.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for falsely and maliciously publishing, of and concerning him, in a newspaper published, &c., called, &c., (or book or writing, as the case may be,) the following false and defamatory matter, with intent to defame the plaintiff, viz: (here set out the language charged as libellous,) on the —— day of ——.

E. F., Att'y for P'lff.

For trespass in taking goods.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages for wrongfully taking the following goods and chattels, the property of the plaintiff, viz: (here state the goods, &c.)

E. F., Att'y for Pl'ff.

For the recovery of land, or possession thereof; complaint in the nature of an action for ejectment.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff sues to recover the following tract of land, (describing it, or the possession, as the case may be,) of which he was possessed before the commencement of this suit, and after such possession accrued, the defendant entered thereupon, and unlawfully withholds and detains the same, together with —— dollars, for the detention thereof.

E. F., Att'y for Pl'ff.

For rent, on demise.

A. B., plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, the rent of a tract of land, viz: (describing the land,) demised by the plaintiff to the defendant, on the —— day of ——, said rent commencing on the —— day of ——, and ending on the —— day of ——.

E. F., Att'y for Pl'ff.

For use and occupation of land.

A. B. plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, for the use and occupation by him of the following tract of land, belonging to the plaintiff, viz: (here describe it), from the —— day of —— to the —— day of ——.

E. F., Att'y for Pl'ff.

For trespass to land.

A. B. plaintiff, *vs.* C. D., defendant. } The plaintiff claims of the defendant —— dollars, as damages, for a trespass by the defendant on the following tract of land, belonging (or in the possession of) the plaintiff, (describing it), and for cutting the timber, treading down the grass, &c., on the —— day of ——.

E. F., Att'y for Pl'ff.

PLEAS.

Non est factum.

A. B., plaintiff, *vs.* C. D., defendant. } The defendant, for answer to the complaint, saith, that the note, (or bond, as the case may be), upon which the action is founded, was not executed by him, or by any one authorized to bind him in the premises; and he makes oath that this plea is true. (If filed by an executor or administrator, that he believes it to be true.)

E. F., Att'y for Def't.

Not guilty.

A. B., plaintiff, *vs.* C. D., defendant, } The defendant, for answer to the complaint, saith he is not guilty of the matters alleged therein.

E. F., Att'y for Def't.

Payment.

A. B., plaintiff, *vs.* C. D., defendant. } The defendant, for answer to the said complaint, saith that he has paid the debt or demand for the recovery of which this suit is brought, before the action was commenced.

E. F., Att'y for Def't.

Infancy.

A. B., plaintiff, *vs.* C. D., defendant. } The defendant, for answer to the said complaint, saith, that at the time of the execution of the note, the foundation of the suit, (or at the time of the creation of the debt, or making of the contract, as the case may be), he was a minor, under the age of twenty-one years.

E. F., Att'y for Def't.

Statute of limitations.

A. B., plaintiff, *vs.* C. D., defendant. } The defendant, for answer to said complaint, saith, that the (note, bond, or contract, as the case may be), is barred by the statute of limitations of —— years.

E. F., Att'y for Def't.

Usury.

A. B., plaintiff, *vs.* C. D., defendant. } The defendant, for answer to said complaint, saith, that the said (note, bond, or contract, as the case may be), upon which the action is founded, is usurious and void for the interest due thereon.

E. F., Att'y for Def't.

NOTE.—If the usurious interest has been included with the principal, the fact should be stated, and the amount.

Set-off.

A. B., plaintiff, } The defendant, as a defence to the action of the plaintiff, says, that at the time the said summons was sued out, the plaintiff was indebted to him in the sum of —— dollars, by note, (bond, liquidated, or unliquidated demand, as the case may be, and describing it by its date, amount, and when and to whom payable), which he hereby offers to set-off against the demand of the plaintiff, and he claims judgment for the residue, (if the set-off exceeds the plaintiff's demand.)
vs.
C. D., defendant. }

E. F., Att'y for Def't.

Tender.

A. B., plaintiff, } The defendant, for answer to said complaint, says, that he tendered to the plaintiff the amount due to him, to wit, —— dollars, before the action was commenced; and now brings the money into court, (if of ponderous articles, or other personal property), that he has always been ready and willing to perform his contract with the plaintiff, and offered to do so before the action was commenced.
vs.
C. D., defendant. }

E. F., Att'y for Def't.

PART FOURTH.

OF CRIMES, AND THEIR PUNISHMENT; PROCEEDINGS IN CRIMINAL CASES; JAILS, AND PENITENTIARY.

Title 1.

OF CRIMES AND THEIR PUNISHMENT.

CHAPTER 1. Definitions of crimes, felonies, misdemeanors, and petty offences.
" 2. Of certain indictable offences, and the prevention thereof.

CHAPTER I.

DEFINITION OF CRIMES, FELONIES, MISDEMEANORS, AND PETTY OFFENCES.

SEC.
3069. Definition of a public offence.
3070. Exceptions.
3071. Definition of a felony.
3072. Definition of a misdemeanor.
3073. Definition of a petty offence.
3074. Felonies and misdemeanors, how prosecuted.

Definition of public offence.

§ 3069. A crime, or public offence, is an act or omission forbidden by law, and punishable by death, imprisonment, fine, removal from office, or disqualification to hold office under this state.

Exceptions.

§ 3070. Acts or omissions, to which a pecuniary penalty is attached, recoverable by action, by a person for his own use, or for the use in whole or part of the state, or any county, or corporation, are not public offences within the meaning of this code.

Felonies.

§ 3071. A felony within the meaning of this code, is a public offence punished with death, or which is, or may be punished by confinement in the penitentiary.

Misdemeanors.

§ 3072. Every other public offence, except felonies, and such as are expressly made triable before a justice of the peace, are called misdemeanors.

Petty offences.

§ 3073. A public offence, triable before a justice of the peace, is called a petty offence.

Felonies and misdemeanors indictable.

§ 3074. All felonies and misdemeanors are, unless some other express provision is made by law, indictable offences.

CHAPTER II.

OF CERTAIN INDICTABLE OFFENCES AND THE PREVENTION THEREOF.

ARTICLE 1. Offences against the public peace.
" 2. Offences against the person.
" 3. Offences against public and private property.
" 4. Offences against public justice.
" 5. Offences against public morality and decency.
" 6. Miscellaneous offences.
" 7. Offences against slaves.
" 8. Misdemeanors at common law.
" 9. Petty offences, cognizable before a justice of the peace.
" 10. Offences committed by slaves, and in certain cases by free persons of color, and proceedings in relation thereto.
" 11. Of the duty of the sheriff in preserving the peace.

ARTICLE I.

Of offences against the public peace.

SEC.
3075. Treason, how punished.
3076. Free person aiding in rebellion of slaves.
3077. Writings, &c., with intent to incite slaves to insurrection, &c.
3078. Circulating papers, &c., with intent to incite to insurrection any slave or person of color.
3079. Unlawful assemblies pulling down or destroying buildings or vessels.

Treason; how punished.

§ 3075. Every one who commits the crime of treason against the state, on conviction thereof, must suffer death, or confinement in the penitentiary for life, at the discretion of the jury trying the same.

Free person aiding in rebellion, &c.; how punished.

§ 3076. If any free person aids, or assists, or is in anywise concerned with any slave, in any actual or meditated rebellion, or insurrection, against the white inhabitants of this state, or against the laws and government thereof; or in any manner advises, consults, or plots with any slave, for the purpose of encouraging, inciting, aiding, or assisting in any such rebellion, or insurrection, either actual or meditated, such free person, on conviction thereof, must suffer death, or confinement in the penitentiary for life, at the discretion of the jury trying the same.

Writing, &c., with intent to incite slaves to discontent, &c., how punished.

§ 3077. If any person in this state writes, prints, draws, paints, or engraves, or aids in drawing, writing, printing, painting, or engraving on any substance, with intent to circulate the same, any letters, words, drawing, painting, or engraving, calculated to incite to discontent, insurrection, or rebellion, any slave or free person of color; or if any person has in his possession, with intent to circulate the same, to excite to discontent, insurrection, or rebellion, any slave or free person of color, any letters, words, paintings, drawings, or engravings; such person, on conviction, must be punished by imprisonment in the penitentiary not less than ten years.

Circulating any paper, &c., with intent to incite to discontent slaves, &c.

§ 3078. If any person knowingly circulates in this state any paper, pamphlet, book, drawing or painting, or does any other act calculated, and with the intent, to incite to discon-

tent, insurrection or rebellion, any slave or free person of color, such person, on conviction, must suffer death, or imprisonment in the penitentiary not less than ten years, at the discretion of the jury trying the same.

Unlawful assemblies, destroying buildings, &c.

§ 3079. If any persons unlawfully assembled, demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any dwelling house, or other building, or to demolish or destroy any ship, or vessel; they must, on conviction, be imprisoned in the penitentiary not less than two nor more than five years, or fined and imprisoned in jail, at the discretion of the jury trying the same.

ARTICLE II.

Offences against the person.

SEC.

3080. Definition of murder in the first degree, and how punished.
3081. Definition of murder in the second degree, and how punished.
3082. Jury to ascertain if the offence is murder in the first or second degree.
3083. Killing in a sudden rencounter by person armed with bowie knife, &c., how punished.
3084. Definition of manslaughter in the first degree, and how punished.
3085. Definition of manslaughter in the second degree, and how punished.
3086. Fighting in city, &c., and using or attempting to use fire arms or air gun, not in self-defence, how punished.
3087. Killing in sudden rencounter with deadly weapon concealed, &c., murder in second, and may be murder in first degree.
3088. Killing in a duel, murder in the second degree.
3089. Giving or accepting challenges, how punished.
3090. Rape, how punished.
3091. Carnal knowledge of female over ten years of age, by administering substance to produce stupor, &c., how punished.
3092. Carnal knowledge, or the abuse in the attempt at, of female under the age of ten years, how punished.
3093. Compelling female to marry or to be defiled, how punished.
3094. Taking a woman unlawfully against her will, with intent to compel her to marry him.

SEC.

3095. Taking female under fourteen from father or mother, &c., for prostitution, &c., how punished.
3096. Taking or decoying child under twelve years, with intent to detain or conceal from its parents, &c., how punished.
3097. Endangering life by overloading boat, how punished.
3098. Negligence in officer of steam boat causing loss of life, how punished.
3099. The bursting of boilers from neglect or ignorance of officers, how punished.
3100. Endangering life by bursting boiler while racing; captain and engineer, how punished.
3101. Definition of kidnapping, and how punished.
3102. Buying or selling free person for a slave, how punished.
3103. Bringing into the state free persons to hold as slaves, how punished.
3104. Robbery, how punished.
3105. Definition of mayhem, and how punished.
3106. Assaults with intent to murder, maim, rob, ravish, or to commit crime against nature, how punished.
3107. Assaults with a cowhide, &c., having a deadly weapon with intent to intimidate, how punished.
3108. Lynching by two or more, how punished.
3109. Injuring or obstructing rail road, how punished.

Murder in the first degree. 16 Ala., 781.

§ 3080. Every homicide perpetrated by poison, lying in wait, or by any other kind of willful, deliberate, malicious, and premeditated killing, or which is committed in the perpetration of, or the attempt to pepetrate, any arson, rape, robbery, or burglary, is murder in the first degree; so, also, every homicide perpetrated from a premeditated design unlawfully and maliciously, to effect the death of any human being, other than him who is killed; or perpetrate by any act greatly dangerous to the lives of others, and evidencing a depraved mind, regardless of human life, although without any preconceived purpose, to deprive of life any particular individual; and any person guilty of murder in the first degree, on conviction, must suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury trying the same.

How punished.

Murder in the second degree.

§ 3081. Every homicide committed under such circumstances as constituted murder at the common law, and is not embraced by murder in the first degree, as defined in the preceding section, is murder in the second degree; and, on conviction, the offender must be imprisoned in the penitentiary for not less than ten years.

How punished.

Jury to ascertain what degree. 16 Ala., 781.

§ 3082. Upon any indictment for murder, the jury finding the offender guilty, must ascertain by their verdict if it is murder in the first or second degree; but if the accused upon arraignment confess his guilt, the court must proceed to determine the degree of crime by the verdict of a jury, upon the examination of the testimony, and pass sentence accordingly.

Manslaughter with bowie knife.

§ 3083. Any person armed with a bowie knife, or any knife of the like kind or description, who commits manslaughter therewith, in a sudden recounter, must, on conviction, be imprisoned in the penitentiary not less than five or more than ten years.

Manslaughter in the first degree.

§ 3084. Every person convicted of the crime of manslaughter, by voluntarily depriving a human being of life, is guilty of manslaughter in the first degree, and must, on conviction, be punished by imprisonment in the penitentiary not less than two or more than ten years; or by fine, not less than five hundred dollars, and imprisoned in the county jail not more than one year, at the discretion of the jury.

In the second degree.

§ 3085. Every person convicted of manslaughter under any other circumstances than those expressed in the preceding section, is guilty of manslaughter in the second degree, and must be fined not less than five hundred dollars, or imprisonment in jail not more than six months, one or both, at the discretion of the jury.

Fighting in streets, &c., and using fire arms, &c.

§ 3086. If any person while fighting in the streets of any city or town, or at a militia muster, or at any place public in itself, or made public by an assemblage of persons, uses or attempts to use, any fire arms or air gun, unless in self-defence, such person must, on conviction, be fined not less than two hundred or more than five hundred dollars, or impris-

oned in the county jail not more than six months, one or both, at the discretion of the jury.

Killing with deadly weapon concealed before commencement of fight.

§ 3087. When the killing in any sudden rencounter or affray, is caused by the assailant, by the use of a deadly weapon concealed before the commencement of the fight, his adversary having no deadly weapon drawn, such killing is murder in the second degree, and may be, according to the circumstances, murder in the first degree.

Fighting duels.

§ 3088. If any person within this state, kill another by fight in single combat, commonly called a duel, with deadly weapons; such killing is murder in the second degree.

Giving, accepting or conveying challenges. 12 Ala., 276.

§ 3089. Every person who gives, accepts or knowingly carries a challenge, in writing or otherwise, to fight in single combat, with any deadly weapon, either in or out of this state, on conviction, must be imprisoned in the penitentiary two years.

Rape.

§ 3090. Any person convicted of the crime of rape, must be imprisoned in the penitentiary for life.

Carnal knowledge of woman above ten years by administering drugs, &c.: how punished.

§ 3091. Any person who has carnal knowledge of any female above the age of ten years, without her consent, by administering to her any substance, which produces such stupor, imbecility of mind, or weakness of body, as to prevent effectual resistance, must, on conviction, be imprisoned in the penitentiary for life.

Carnally knowing female under ten years; how punished.

§ 3092. Any person who carnally knows, or abuses, in the attempt carnally to know, a female under the age of ten years, must, on conviction, be imprisoned in the penitentiary for life.

Compelling woman by force to marry, &c.; how punished.

§ 3093. Any person who takes any woman unlawfully against her will, and by menace, duress, or force, compels her to marry him, or to marry any other person, or to be defiled, must, on conviction be imprisoned in the penitentiary not less than seven years.

Taking woman against her will, with intent to marry, &c.; how punished.

§ 3094. Any person who takes any woman, unlawfully, against her will, with the intent to compel her by menace, duress, or force, to marry him, or to marry any other person, or to be defiled, must, on conviction, be imprisoned in the penitentiary not less than seven years.

Taking female under fourteen years from father, &c., for prostitution, &c.; how punished.

§ 3095. Any person who takes any female under fourteen years of age, from her father, mother, guardian, or other person having the legal charge of such female, without their consent, whether for the purpose of prostitution, concubinage or marriage, upon conviction thereof, must be imprisoned in the penitentiary not less than two years.

Taking child under twelve years, with intent to conceal, &c., from parents, &c.; how punished.

§ 3096. Every person who unlawfully takes, or decoys away, any child under the age of twelve years, with intent to detain or conceal such child from its parents, guardian, or other person having the lawful charge of such child, must, on conviction, be imprisoned in the penitentiary not less than five years.

Endangering life by over-

§ 3097. Every person navigating any boat or vessel, for gain, who willfully receives so many passengers, or such a

quantity of loading, on board of such boat or vessel, that by means thereof the same sinks, or oversets, and the life of any human being is endangered, upon conviction, must be fined in a sum not less than one hundred or more than one thousand dollars; and may be imprisoned in the county jail, at the discretion of the jury, not exceeding six months. loading boat, &c. How punished.

§ 3098. Whenever any loss of human life, or injury to any human being, occurs on board of any steam boat navigating the waters of this state, from negligence or want of skill of the captain, engineer or other officer, or person, engaged in the management of such steam boat, or any of the machinery thereof, the officer or other person causing such loss of life or injury, must, on conviction, be imprisoned in the penitentiary, not less than two or more than ten years. Loss of life on any steam boat from negligence. How punished.

§ 3099. If any captain or any other person, having charge of a steam boat, used for the conveyance of passengers or freight; or if the engineer in charge of the machinery of such boat, or of any apparatus therein for the generation of steam, from ignorance or gross negligence, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus, in which such steam is generated, or any apparatus or machinery connected therewith, by which human life is endangered, any such captain, engineer, or other person, must, on conviction, be imprisoned in the penitentiary not less than two years. Bursting boiler from ignorance or neglect.

§ 3100. Whenever any steam boat bursts its boiler, or any apparatus or machinery connected therewith, while racing with another boat, or attempting to excel her in speed, and the life of any person is endangered thereby; the captain and engineer in charge of such boat must, on conviction, be imprisoned in the penitentiary not less than two years. Endangering life by racing of steam boats.

§ 3101. Every person who unlawfully, or forcibly, confines, inveigles, or entices any free person, with intent either, first, to cause such person to be secretly confined, or imprisoned in this state against his will; or, second, to cause such person to be sent out of this state against his will; or with the intent to sell such person for a slave; is guilty of kidnapping, and, on conviction, must be imprisoned in the penitentiary, not less than three or more than ten years. Kidnapping.

§ 3102. Every one who knowingly buys or sells a free person for a slave, on conviction, must be imprisoned in the penitentiary, not less than ten years. Buying or selling free person for slave.

§ 3103. Every person who knowingly brings into this state any free person, with intent to hold or dispose of such free person as a slave, must, on conviction, be imprisoned in the penitentiary, not less than two or more than ten years. Bringing into state free person to hold as slave.

§ 3104. Any person who commits the crime of robbery, on conviction, must be imprisoned in the penitentiary, not less than ten years. Robbery.

§ 3105. Every person who unlawfully, maliciously, and intentionally, cuts out or disables the tongue, puts out or destroys an eye; cuts, bites or strikes off an ear; cuts, bites Mayhem. 8 Port., 472; 3 Ala., 497; 10 Ala., 928.

off, or slits, mutilates or destroys the nose or lip; or cuts, bites, tears, strikes off or disables a limb, or member, of any other person, is guilty of mayhem, and, on conviction, must be imprisoned in the penitentiary not less than two or more than twenty years.

Assaults with intent to murder, maim, rob, ravish, &c. 13 Ala., 413; 14 Ala., 411.

§ 3106. Every person who commits an assault with intent to murder, maim, rob, or ravish, or to commit the crime against nature, or who attempts to poison any human being, or to commit murder by any means not amounting to an assault, on conviction thereof, must be imprisoned in the penitentiary not less than two or more than twenty years.

Assaults with cowhide, &c., having pistol, &c., to intimidate.

§ 3107. If any person assaults and beats another with a cowhide, stick, or whip, having at the time in his possession a pistol, or other deadly weapon, with intent to intimidate, and prevent the person assaulted from defending himself, must, on conviction, be imprisoned in the penitentiary not less than two or more than twenty years.

Lynching.

§ 3108. All persons, to the number of two or more, who abuse, whip, or beat any person upon any accusation, real or pretended, or to force such person to confess himself guilty of any offence, or to make any disclosures, or to compel such person to consent to leave the neighborhood, county, or state, must, on conviction, be fined and imprisoned, one or both, at the discretion of the jury, not less than one thousand dollars, and imprisoned in the county jail not less than six months or more than one year.

Injuring or obstructing rail road.

§ 3109. Any person who wantonly and maliciously injures, or places any impediment or obstruction on any railroad in this state, by means of which injury, impediment, or obstruction, any car or vehicle diverges, or is thrown from the track thereof, must, on conviction, be imprisoned in the penitentiary not less than two or more than ten years.

ARTICLE III.

Of offences against public and private property.

SEC.
3110. Defacing or injuring public buildings.
3111. Writing or drawing on public buildings.
3112. Private secretary of the governor to give notice, and how.
3113. Defacing churches, private buildings, or their inclosures.
3114. Maliciously killing or disabling animals, or injuring or destroying property of others.
3115. Disfiguring certain animals belonging to others.
3116. Maliciously breaking, &c., fences; letting from its landing, &c., any ferry-boat, flat, &c.
SEC.
3117. Fines under the three preceding sections go to the party injured.
3118. Maliciously cutting down wood on another's lands, or severing and carrying from the freehold any thing attached thereto.
3119. Willfully removing any monument, defacing or altering marks.
3120. Willfully removing or destroying any mile stone, post, or guide board, or altering or defacing the same.
3121. Destroying or injuring, otherwise than by burning, any bridge or turnpike gate.

SEC.
3122. Injuring any mill-dam or embankment.
3123. Opening any lock-gate, &c., or obstructing canal.
3124. Removing, injuring, or destroying any lock-bank, &c., in any canal.
3125. Poisoning springs, &c.
3126. Harboring or concealing runaway slave.
3127. Aiding slave to run away.
3128. Persuading slave to leave his master's service, with intent to go to free state, or harboring runaway slave, with knowledge of his intent to go to a free state.
3129. Forging papers to enable slave to run away, to pass as free, or to leave the state.
3130. Inveigling, stealing, &c., slave, with intent to convert to his own use, or the use of another.
3131. Making or receiving fraudulent conveyances.
3132. Removing property to which another has a claim under a written instrument.
3133. If defendant an honest purchaser, his punishment.
3134. Making false invoices, bills of lading, &c., with intent to defraud insurer.
3135. Making false affidavit or protest, or procuring same to defraud insurer.
3136. Casting away, sinking, &c., to injure owner of vessel, or property on board, or insurer.
3137. Burning a building insured to charge the insurer.
3138. Stealing property in another state and bringing it into this.
3139. Marking or branding unmarked horses, mares, &c., the property of another.
3140. Altering or defacing marks or brands.
3141. Personating another person, and receiving property intended for the person personated.
3142. Obtaining money, property or signatures by false pretences.
3143. Officers of incorporations, clerks, &c., embezzling property.
3144. Embezzlement by common carriers, &c.
3145. Embezzlement by bankers, commission merchants, &c.
3146. Bankers, commission merchants, &c., failing for three days after demand to pay proceeds of sales, &c.
3147. Officers of banks in this state, fraudulently converting property, &c.
3148. Embezzlement by state treasurer, or any one employed in his office.
3149. Property, how described in indictments for embezzlement.
3150. Receiving or buying property, knowing that it has been embezzled.
3151. Forging or counterfeiting instruments, &c., issued by any state officer, any bank bill, &c., issued by any bank, or note, &c., issued under any law of the United States.
3152. Forging or counterfeiting any check, draft, &c., drawn on any bank, or on state treasurer.
3153. Altering any bill or note of any bank issued to circulate as money.
3154. Uttering any altered, forged, or counterfeit bank bill, &c., knowing the same to be altered, &c.
3155. Forging, counterfeiting, or uttering any will, acknowledgment of deed, &c., or any certificate of the proof of deed, &c.
3156. Counterfeiting seal of the state, or of any public officer, court of record, or bank in this state.
3157. Forging or falsifying of records, or returns of officers.
3158. Forgery of notes, bonds, bills of exchange, indorsements, cotton receipts, &c.
3159. Officer certifying falsely as to proofs or acknowledgments of conveyances.
3160. Counterfeiting gold or silver coin.
3161. Being in possession of coin, knowing the same to be counterfeit, with intent to defraud by uttering it as true or false.
3162. Making plates for notes, &c., issued by banks, without authority, &c., or having impressions in possession, with intent to have the same filled up, &c.
3163. Plate taken to be in the form of the instrument imitated, when impression conforms to the parts of the instrument which are engraved.
3164. Other forgeries.
3165. Uttering and publishing forged instruments, coin, &c.
3166. Different degrees of forgery, how punished.
3167. The total alteration or obliteration of instrument, with intent to defraud, forgery in the same degree as alteration, &c., of part.
3168. What instruments, writings, signatures, &c., are the subject of forgery; different parts of genuine instruments may be so placed together as to constitute forgery.

SEC.
3169. Forgery of printed signatures.
3170. Larceny in dwelling houses, stores, &c.
3171. Stealing from building on fire, or property removed.
3172. Stealing from the person.
3173. Definition and punishment of grand larceny.
3174. Definition and punishment of petit larceny.
3175. Jury to ascertain the value of each article stolen, and court to render judgment therefor against defendant.
3176. Taking or destroying conveyances, with intent to injure or defraud.
3177. Receiving or concealing slaves, knowing them to have been stolen.
3178. Receiving, &c., other personal property, conveyances, &c., knowing them to have been stolen.
3179. Any person may be indicted under the two preceding sections, although principal offender not tried or convicted.
3180. Stealing horses, &c.
3181. Indictment under the preceding section sufficient in general terms.
SEC.
3182. Receiving or buying stolen horses,
3183. Definition of burglary.
3184. Punishment of burglary.
3185. Definition of arson in the first degree.
3186. Definition of "dwelling-house," in the preceding section.
3187. Burning in the night time steam boat or vessel in which there is a human being, arson in the first degree.
3188. Definition of arson in the second degree.
3189. Burning in the day time any steam boat or vessel in which there is a human being, arson in the second degree.
3190. Burning churches, ware houses, &c., arson in the second degree.
3191. Burning barn, stable, &c., in the curtilage of dwelling house, &c., arson in the second degree.
3192. Definition of arson in the third degree.
3193. Punishment of the different degrees of arson.
3194. Maliciously placing impediment or obstruction on railroad.
3195. Negligently placing impediment or obstruction on railroad.
3196. Wantonly destroying any plank or covered road.

Injuring or defacing public buildings.

§ 3110. Any person who willfully injures any building belonging to the state or county, or to any town or city, or any of the enclosures, or in any way willfully defaces the same, must, on conviction, be fined not exceeding ten times the amount of the injury done, and not less than ten dollars.

Writing or drawing on buildings.

§ 3111. Any person who willfully writes or draws figures, characters or letters on the walls of the state house, or any building belonging to the state, or any county thereof, or to any person, or the fences or enclosures of the same, must, on conviction, be fined not less than ten or more than one hundred dollars.

Duty of secretary of governor in relation to.

§ 3112. The private secretary of the governor must cause the preceding sections to be printed, and at all times kept upon the wall, in at least six conspicuous places in the state house.

Injuring or defacing churches, &c.

§ 3113. Any person who wantonly injures any church, or other building, the property of another, or their enclosures; or in any way willfully defaces the same, must, on conviction, be fined not exceeding ten times the amount of the injury done, and not less than ten dollars.

Killing or disabling animal or property of others. 7 Ala., 728; 15 Ala., 415.

§ 3114. Any person who unlawfully and maliciously kills or disables any animal belonging to another; or unlawfully and maliciously injures or destroys any article or commodity of value, the property of another, must, on conviction, be fined in a sum not less than five times the value of the property destroyed, or the injury done, and imprisoned not more than six months.

Injuring or disfiguring horse, &c.

§ 3115. Any person who willfully or maliciously injures or disfigures any horse, mare, gelding, colt, filly, ass, or mule, the property of another, must, on conviction, be fined, not less than five times the amount of the injury done, and may be imprisoned not more than six months.

Breaking fences, &c.

§ 3116. Any person who unlawfully and maliciously breaks, throws down, or destroys, any fence, or other enclosure; breaks, cuts off, or carries away from its mooring or landing, any ferry boat, flat, or canoe, or other vessel or boat, the property of another, must, on conviction, be fined, not less than five times the value of the property destroyed, or injury done; but in no case less than twenty dollars; and may be imprisoned not more than six months.

Fines to the party injured.

§ 3117. The fines under the provisions of the three preceding sections go to the party injured.

Cutting down or destroying wood, &c.

§ 3118. Every person who willfully and maliciously commits any trespass, by cutting down or destroying any wood or timber, growing or standing upon the lands of another; or who maliciously severs from the freehold any produce thereof; or who severs and carries away from any freehold any property or thing attached thereto, under such circumstances as would render the trespass a larceny, if the thing severed and carried away were personal property, must, on conviction, be fined not exceeding two hundred dollars, and be imprisoned not exceeding six months.

Removing monument or boundaries.

§ 3119. Any person who willfully removes any monument, erected to designate the corner, or any other point in the boundary of any lot or tract of land; or willfully defaces or alters the marks upon any tree, post, or monument, made to designate the corner, or other point in the boundary of any lot or tract of land; or willfully cuts down or removes any tree upon which any such mark is made, upon conviction, must be fined not less than fifty or more than five hundred dollars; and may be imprisoned not more than twelve months.

Cutting down or removing boundary tree.

Removing or destroying mile stone, &c.

§ 3120. Any person who willfully destroys or removes any mile stone, post, board, or guide-board, set upon any road or highway; or who willfully defaces or alters any letters or figures upon such stone, post, or board, must, on conviction, be fined not less than ten or more than fifty dollars.

Injuring or destroying toll bridges, gates, &c.

§ 3121. Any person who willfully destroys or injures, otherwise than by burning, any public or toll bridge, or causeway, turnpike gate, or gate up at any toll bridge, or on any road by authority of law, must, on conviction, be fined in a sum not less than fifty or more than one thousand dollars, and may be imprisoned not more than six months.

Mill-dams, &c.

§ 3122. Any person who willfully injures any mill dam, or other dam to create water power, or any embankment necessary to support such dam, on conviction, must be fined not less than fifty or more than one thousand dollars; and may be imprisoned not exceeding six months.

Lock, gate, puddle gate, culvert or water gate of canal.

§ 3123. Any person who wantonly opens any lock-gate, puddle-gate, culvert-gate, or water-gate, of any canal in this state, or by any means prevents, or attempts to prevent, the free use of any such gates; or wantonly obstructs or hinders the free use or navigation of any such canal, must, on conviction, be fined, not more than two hundred dollars, and may be imprisoned not more than three months.

Lock bank, water-weir, aqueduct, &c., in canal.

§ 3124. Any person who willfully removes, injures, or destroys any lock, bank, water-weir, aqueduct, or culvert, in any canal in this state, must, on conviction, be fined not exceeding five hundred dollars, and may be imprisoned not exceeding six months.

Poisoning springs, &c.

§ 3125. Any person who willfully and wantonly poisons any spring, fountain, well, or reservoir of water, must, on conviction, be imprisoned in the penitentiary not less than ten nor more than twenty years.

Harboring slaves.

§ 3126. Any person who harbors or conceals any runaway slave, knowing such slave to be a runaway, must, on conviction, be fined not less than one hundred or more than one thousand dollars; or may be imprisoned in the penitentiary for two years, at the discretion of the jury.

Aiding slave to runaway.

§ 3127. Any person who knowingly aids any slave to run away, must, on conviction, be imprisoned in the penitentiary, not less than two or more than five years.

Persuading slave to leave service to go to a free state, &c.

§ 3128. Any person who persuades any slave to leave his master's service, with the intent to go to a state or country where such slave may enjoy freedom, although such slave may not leave his master's service; or who harbors or conceals such slave, being a runaway, with a knowledge of the intention of such slave to go to such state or country, must, on conviction, be imprisoned in the penitentiary not less than five or more than twenty years.

Forging passes.

§ 3129. Any person who forges or fabricates any paper in writing, for the purpose of enabling a slave to escape, or run away from his master; or to enable such slave to pass as a free person; or to enable such slave to leave this state, must, on conviction, be imprisoned in the penitentiary not less than five or more than twenty years.

Slave stealing, &c. 8 Ala., 328; 15 Ala., 259.

§ 3130. Any person who inveigles, steals, carries, or entices away any slave, with intent to convert such slave to his own use, or the use of another; or to enable such slave to reach a state or country where he would enjoy his freedom, must, on conviction, be imprisoned in the penitentiary not less than five or more than twenty years.

Fraudulent conveyances

§ 3131. Any person who makes or receives any conveyance of property, with the intent to hinder, delay, or defraud creditors, must, on conviction, be fined not less than fifty, or more than one thousand dollars, and must be imprisoned not more than six months.

Removing property to which another has a claim.

§ 3132. Any person who removes any personal property, with the intent to carry the same out of the state, for the purpose of hindering, delaying, or defrauding any person

who has a claim thereto, under a written instrument, with the knowledge of the existence thereof, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Indictment.

§ 3133. If it appears that the defendant, in an indictment under the preceding section, was an honest purchaser of the property, his imprisonment must not exceed two years.

Making false invoice to defraud insurer.

§ 3134. If any owner of any steam boat or vessel, or of any property laden, or pretended to be laden, on board of the same; or if any other person concerned in the lading, or fitting out of such steam boat or vessel, makes out and exhibits any false or fraudulent estimate of any property laden, or pretended to be laden, on board of such steam boat or vessel, with intent to injure or defraud the insurer of such steam boat, vessel, or property, or any part thereof, he must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

False protest, &c., to defraud insurer

§ 3135. Any master, officer, or mariner of any vessel, who makes, or causes to be made, or swears to, any false affidavit or protest; or if any owner, or other person concerned in such vessel, or in any property laden on board the same, procures any such false affidavit or protest to be made; or exhibits the same, with the intent to injure, deceive, or defraud, any insurer of such vessel, or property laden on board the same, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Casting away, burning, &c., a vessel with intent to injure owner or insurer.

§ 3136. Any person who willfully casts away, burns, sinks, or otherwise destroys, any ship or vessel, with the intent to injure the owner of such vessel, or of any property on board the same, or an insurer of any such vessel or property, must, on conviction, be imprisoned in the penitentiary not less than five or more than ten years.

Burning building, &c., to charge insurer.

§ 3137. Any person who willfully burns a building, or any property which is at the time insured against fire, with intent to charge or injure the insurer, must be imprisoned in the penitentiary not less than five or more than ten years.

Bringing stolen property into the state.

§ 3138. Any person who feloniously steals the property of another, in any other state or country, and brings the same, or any portion thereof, into this state, must, on conviction, be punished in the same manner, and to the same extent, as if the property thus brought into, had been stolen in this state.

Marking or branding unmarked cattle.

§ 3139. Any person who feloniously marks, or brands, any unmarked horse, mare, colt, mule, ass, bull, cow, bullock, ox, heifer, calf, hog, sheep, or goat, the property of another, must, on conviction, be punished, as if he had committed larceny to the value of such animal.

Altering marks and brands.

§ 3140. Any person who feloniously alters or defaces the mark or brand of any horse, mare, colt, mule, ass, bull, cow, bullock, ox, heifer, calf, hog, sheep, or goat, the property of another, must, on conviction, be punished as if he had committed larceny to the value of such animal.

Personating another.

§ 3141. Any person who falsely personates another, and in such assumed character receives any property of any description, intended to be delivered to the person personated, must, on conviction, be punished as if he had stolen such property.

Obtaining money, &c., under false pretences.

§ 3142. Any person who by any false pretences, or by any false token, with intent to defraud another, obtains from any person any personal property, or the signature of any person to any written instrument, the false making of which is forgery, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years; but in case such personal property does not exceed twenty dollars in value, such person must be fined not exceedihg one hundred dollars, and imprisoned in jail not exceeding six months.

Embezzlement by officers, agents, &c.

§ 3143. Any officer, agent or clerk of any incorporated company, or clerk or agent of any private person, or copartnership, except apprentices and other persons under the age of eighteen years, who embezzles, or fraudulently converts to his own use, any property of another, which has come into his possession by virtue of his employment, must, on conviction, be punished as if he had feloniously stolen such property.

By common carriers.

§ 3144. Any common carrier or other person to whom any property has been delivered to be carried for hire, who embezzles, or fraudulently converts to his own use such property, or any portion thereof, must, on conviction, be punished, as if he had feloniously stolen such property.

Private bankers, commission merchants, &c.

§ 3145. Any private banker, commission merchant, factor, broker, attorney, or any other agent, who sells or disposes of property for another, and embezzles, or fraudulently converts to his own use the proceeds, or any portion of the same, must, on conviction, be punished as if he had feloniously stolen such proceeds.

Private bankers, commission merchants, &c., failing to pay over money for property sold

§ 3146. Any private banker, commission merchant, factor, broker, attorney or any other agent, who sells or disposes of property for another, and refuses for three days after a demand made by the person entitled to the same, his agent or attorney, to pay the amount to which such person is entitled, must, on conviction, be fined not more than one thousand dollars, and imprisoned not less than three or more than six months.

Embezzlement of property, &c., deposited in bank, &c.

§ 3147. If any president, cashier, or other officer, agent, or servant, of any bank incorporated under any law of this state; or any private banker, commission merchant, factor, broker, attorney or any other agent, embezzles, or fraudulently converts to his own use, any effects or property belonging to, or in possession of such bank, or deposited therein, or any property deposited with such private banker, commission merchant, factor, broker, attorney or other agent, belonging to another, must, on conviction, be punished as if he had feloniously stolen such property.

§ 3148. If the treasurer of this state, or any person em-

ployed in his office, embezzles or fraudulently converts to his own use, or fraudulently secretes, with intent to convert to his own use, any property belonging to the state, upon conviction, he must be punished as if he had feloniously stolen such property. Embezzlement by state treasurer or person in his office.

§ 3149. When the property, with reference to which the offence, under the six preceding sections, is committed, is money, bank bills, notes, checks, drafts, or securities for money, it is sufficient to describe such property in the indictment, as money, bank bills, notes, checks, drafts, bills of exchange, or other evidences of debt, or securities for money, of or about a certain amount, without more particularly describing such property; and it is also sufficient to charge the embezzlement of any property in general terms. Indictment may charge embezzlement of property generally.

§ 3150. Any person who receives or buys property, knowing that the same has been embezzled, or fraudulently converted, or fraudulently secreted, with intent to defraud the rightful owner, or to prevent the recovery of such property, must, on conviction, be punished in the same manner and to the same extent as if he had embezzled such property. Receiving or buying embezzled property.

§ 3151. Any person who alters, forges or counterfeits any note, certificate, or other evidence of debt, issued by any officer authorized to issue the same; or any bank bill, promissory note, draft, or check, issued by any incorporated bank or banking company of this state, or any other state; or any note, certificate, draft, check, or other evidence of debt, issued by authority of any law of the United States, with the intent to injure or defraud any corporation, government or individual, is guilty of forgery in the first degree. Forgery of certificates, bank bills, &c.

§ 3152. Any person who alters, forges or counterfeits any check, draft, bill or warrant, drawn on any bank or banking company, or upon the treasurer of this state, with intent to defraud any person, corporation or state, is guilty of forgery in the first degree. Forgery of checks on banks, &c.

§ 3153. Any person who fraudulently alters any bill or note of any bank or banking association, of this or any other state, issued to circulate as money, by abstracting a part from such bill or note, or by incorporating therein a part taken from some other bill or note, with intent to defraud, is guilty of forgery in the first degree. Altering bank bill with parts taken from genuine bill.

§ 3154. Any person who alters, and publishes as true, and with intent to defraud, any falsely altered, forged or counterfeited bank bill, or any one of the instruments, securities, or evidences of debt specified in the two preceding sections, knowing the same to be forged, altered, or counterfeited, is guilty of forgery in the first degree. Altering or publishing counterfeit bank bills.

§ 3155. Any person who forges, counterfeits, or falsely alters: Will or deed.

1. Any will of real or personal property, or any deed or other instrument, being or purporting to be the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way changed or affected.

Acknowledgment of deed

2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument, which by law may be recorded, made, or purporting to have been made, by any officer duly authorized to make such certificate or indorsement; or,

Probate of deed.

3. Any certificate of the proof of any deed, will, or other instrument, which by law may be recorded, made, or purporting to have been made, by any court or officer duly authorized to make such certificate, with intent to defraud, must, on conviction, be adjudged guilty of forgery in the first degree.

Seal of state or any public office of any court, &c.

§ 3156. Any person who counterfeits or forges the seal of this state, or the seal of any public office authorized by law; the seal of any court of record, or of any bank, or company incorporated under the authority of this state, or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, on conviction, is guilty of forgery in the second degree.

Record of will, &c. Judgment on decree.

§ 3157. Any person who, with intent to defraud, falsely alters, forges, destroys or falsifies any record of any will, conveyance, or other instrument, the record of which by law is evidence; the record of any judgment or decree of a court of record, either of law or equity; or the return of any officer to the process of any court, upon conviction, must be adjudged guilty of forgery in the second degree.

Bond, &c.

§ 3158. Every person who falsely makes, alters, forges or counterfeits, with intent to injure or defraud, any bond, bill single, promissory note, bill of exchange, or the indorsement thereof; or any cotton receipt, or receipt for the payment of money, or any instrument, or writing, being or purporting to be, the act of another, by which any pecuniary demand or obligation is, or purports to be, created, increased, discharged, diminished, or in any manner affected, and the grade of the offence not hereinbefore prescribed, upon conviction thereof, must be adjudged guilty of forgery in the second degree.

False certificates by officers.

§ 3159. If any officer authorized to take the proof and acknowledgment of any conveyance of real and personal property, willfully certifies that any such conveyance or instrument was duly proven, or acknowledged, by any party thereto, when no such acknowledgment or proof was made; or was not made on the day on which it was certified to have been made, with the intent to injure or defraud, or enable any other person to injure or defraud, must, on conviction, be adjudged guilty of forgery in the second degree.

Counterfeiting gold or other coin.

§ 3160. Any person who counterfeits any gold, silver, or other coin, which is at the time current by law, usage, or custom, in this state, is guilty of forgery in the second degree.

Having counterfeit money with intent to utter it, &c.

§ 3161. Every person who has in his possession any counterfeit of any gold, silver, or other coin, which is at the time current in this state, knowing the same to be counterfeited, with intention to defraud, or injure, by uttering the same, as true or false, or by causing the same to be so uttered, must,

on conviction, be punished as if guilty of forgery in the second degree.

Making or engraving bank plates, &c.

§ 3162. Any person who makes or engraves, or causes or procures to be made or engraved, any plate, in the form or similitude of a promissory note, bill of exchange, draft, check, certificate of deposit, or evidence of debt, issued by any incorporated bank, or banking company, within this state, or of any state of the United States, without the authority of such bank; or has in his custody or possession, without the authority of such bank, any impression taken from any such plate, with the intent to have the same filled up, and completed, for the purpose of being passed, sold, or uttered; or has made, or caused to be made, or has in his custody or possession, any plate, on which is engraved any figures or words, which may be used for falsely uttering any evidence of debt issued by any incorporated bank, or banking company, with the intent to use the same for such purpose, must, on conviction, be adjudged guilty of forgery in the second degree.

Form of each plate.

§ 3163. Every plate specified in the last section must be deemed to be in the form and similitude of the instrument imitated, when the engraving on such plate resembles or conforms to such parts of the genuine instrument as are engraved.

Other forgeries.

§ 3164. All forgeries, the punishment of which is not in this article provided for, are forgeries in the third degree.

Uttering, &c.

§ 3165. Any person who utters, and publishes, as true, and with intent to defraud, any forged or counterfeit instrument or writing, or any counterfeit gold, silver, or other coin, the forging or counterfeiting of which is declared by this article to be an offence, knowing such instrument, writing, or coin to be forged or counterfeited, must, on conviction, be adjudged guilty of forgery of such instrument or writing, or of counterfeiting such coin; but if it appear on the trial, that the defendant received such forged or counterfeit instrument, writing, or coin, of another, in good faith, and for a valuable consideration, without any circumstances to justify the suspicion of its being forged or counterfeited, he must, on conviction, be punished only as if guilty of forgery in the third degree.

Punishment of forgery.

§ 3166. Forgery in the first degree is punished by imprisonment in the penitentiary, not less than ten or more than twenty years; in the second degree, not less than five or more than ten years in the penitentiary; and in the third degree, by imprisonment in the penitentiary not less than two or more than five years.

Alteration or obliteration.

§ 3167. The total alteration or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, interest in, or any right or claim to property is intended to be created, increased, discharged, diminished, or in any manner affected, must be deemed forgery in the same manner and degree, as the false alterations or obliterations of any such instrument or writing.

What written signatures subject of forgery.

§ 3168. Every instrument with a written signature thereto, and every signature of an individual, firm, or corporate body, or by any officer of such body; and every writing purporting to be such signature, must be deemed a writing and a written instrument, and may be the subject of forgery within the meaning of the provisions of this article relating thereto; and when different parts of several genuine instruments are so placed or connected together as to form one instrument, with intent to defraud, the same must be deemed forgery in the same manner and degree, as if the parts so put together were falsely made or forged.

Printed signatures.

§ 3169. If any person makes or counterfeits, with intent to defraud, any evidence of debt, issued or purporting to have been issued by any corporation having authority for that purpose, to which is affixed the printed signature of any person as agent or officer of such corporation, it must be deemed forgery, in the same manner and degree, as if such person was at the time an officer or agent of such corporation, notwithstanding there may have been no such person in existence.

Stealing from dwelling houses, &c.

§ 3170. Any person who commits larceny in any dwelling house, store house, smoke house, kitchen, stable, shop, warehouse, steam boat, or other vessel, or water-craft, on conviction, must be imprisoned in the penitentiary not less than three or more than six years.

From building on fire.

§ 3171. Any person who commits the crime of larceny, by stealing from any building on fire, or by stealing any property removed in consequence of an alarm of fire, must, on conviction, be imprisoned in the penitentiary not less than three or more than six years.

From the person.

§ 3172. Any person who commits the crime of larceny, by stealing from the person of another, must be imprisoned in the penitentiary not less than three or more than six years

Grand larceny.

§ 3173. Any person who commits the crime of larceny, by stealing any personal property, if the property stolen exceed the value of twenty dollars, must be deemed guilty of grand larceny, and must be imprisoned in the penitentiary not less than two or more than five years.

Petit larceny

§ 3174. Any person who commits the crime of larceny, by stealing any personal property, not exceeding twenty dollars in value, is guilty of petty larceny, and, on conviction, must be fined not exceeding one hundred dollars, and be imprisoned in the county jail not exceeding six months; and for the second offence must be imprisoned in the penitentiary for two years.

Judgment for the value of the article stolen.

§ 3175. Whenever the jury finds the defendant guilty of larceny, such jury must ascertain the value of each article stolen, and the court must render judgment against the defendant for the assessed value, unless such stolen property has been returned to the owner.

Deeds and conveyances

§ 3176. Any person who takes or destroys any deed or conveyance of lands, or personal property, belonging to

another, with the intent to injure or defraud, must, on conviction, be punished as if guilty of grand larceny.

Buying or concealing stolen slaves.

§ 3177. Any person who buys, receives, conceals or aids in the concealment of, any slave, knowing such slave to have been inveigled, stolen, carried or enticed away, with the intents as specified in section 3130, must, on conviction, be punished by imprisonment in the penitentiary not less than five or more than twenty years.

Burying stolen goods.

§ 3178. Any person who buys, receives, conceals, or aids in the concealment of, any personal property other than slaves, or deed, conveyance, or other writing, specified in section 3176, knowing such personal property to have been stolen, or such deed, conveyance, or writing to have been taken with the intention to injure or defraud, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Indictment.

§ 3179. An indictment may be preferred under the two preceding sections, although the principal offender has not been tried or convicted.

Horse stealing.

§ 3180. Any person who feloniously steals or takes away any horse, mare, or gelding, foal or filly, ass or mule, must, on conviction, be imprisoned in the penitentiary not less than three or more than seven years.

Indictment.

§ 3181. In an indictment under the preceding section it is not necessary to designate the particular sex or character of the animal stolen, but it is enough to describe it by such general designation, as in the common understanding embraces it.

Buying or receiving stolen horses.

§ 3182. Any person who receives or buys any horse, mare, gelding, foal, filly, ass or mule, that has been feloniously taken or stolen, knowing that the same has been so taken or stolen, must, on conviction, be punished in the same manner as the thief.

Burglary; definition. 4 Ala., 643.

§ 3183. Burglary is the breaking into and entering, either in the night or day, a dwelling house, or any building within the curtilage of a dwelling house, but not forming a part thereof; or any shop, store, ware house, or other building in which any goods, merchandize, or valuable thing, is kept for use, sale, or deposit, with intent to steal, or commit any felony.

Punishment.

§ 3184. Any person who commits the crime of burglary, on conviction, must be imprisoned in the penitentiary not less than three or more than fifty years.

Arson in the first degree.

§ 3185. Any person who willfully sets fire to, or burns, in the night, a dwelling house, or house adjoining thereto, in which dwelling house there is at the time a human being, is guilty of arson in the first degree.

Dwelling house; definition of.

§ 3186. Any house, prison, or other building, which is occupied by a person lodged therein at night, is a dwelling house, within the meaning of the preceding section.

Burning steamboat, in night.

§ 3187. Any person who willfully sets fire to or burns, in the night time, any steam boat or vessel, in which there is a human being, is guilty of arson in the first degree.

Burning inhabited dwelling house in day time.

§ 3188. Any person who willfully sets fire to or burns, in the day time, any inhabited dwelling house, though without any human being therein at the time, is, on conviction, guilty of arson in the second degree.

Burning steamboat in day time.

§ 3189. Any person who willfully sets fire to, or burns any steam boat, or vessel, in the day time, in which there is a human being, is guilty of arson in the second degree.

Public buildings.

§ 3190. Any person who willfully sets fire to or burns any meeting house, church, court house, town house, college, academy, jail, or other building erected for public use, or any banking house, ware house, cotton house, gin house, store, manufactory, or mill, being, with the property therein contained, of the value of five hundred dollars, is guilty of arson in the second degree.

Burning stables, &c.

§ 3191. Any person who sets fire to or burns any barn, stable, shop, or office, of another person, within the curtilage of any dwelling house, or other building, by the burning whereof any building specified in the preceding section is burnt, is, on conviction, guilty of arson in the second degree.

Any other house, &c.

§ 3192. Any person who willfully sets fire to or burns any other house, or out house, than those mentioned in the five preceding sections, or any bridge, or lock, steam boat, keel boat, ship, or other water-craft, or any turnpike gate, bridge, causeway, or gate, specified in section 3121, under such circumstances as do not make it arson in the first or second degree, is guilty of arson in the third degree.

Punishment of arson.

3193. Arson in the first degree is punishable by imprisonment in the penitentiary for not less than fourteen years; in the second degree, by imprisonment in the penitentiary not less than seven or more than fourteen years; in the third degree, by imprisonment in the penitentiary not less than three or more than seven years.

Wantonly obstructing rail road.

§ 3194. Any person who wantonly injures, or places any impediment or obstruction on, any rail road in this state, must, on conviction, be fined not less than one hundred or more than five hundred dollars, and may be imprisoned not more than six months.

Negligently obstructing rail road.

§ 3195. Every one who negligently places any impediment or obstruction on any rail road in this state, in use for the transportation of passengers, or merchandize, must, on conviction, be fined not less than fifty or more than two hundred dollars.

Injuring certain other roads.

§ 3196. Any person who wantonly and maliciously injures or destroys any plank or covered road, must, on conviction, be fined not less than ten or more than one thousand dollars, and may be imprisoned not more than three months.

ARTICLE IV.

Of offences against public justice.

SEC.
3197. Definition of perjury.
3198. Punishment of perjury.
3199. Subornation of perjury.
3200. In indictment for perjury, what is sufficient to allege.
3201. Bribing or offer to bribe any executive, legislative, or judicial officer.
3202. Accepting bribes by any executive, legislative, or judicial officer.
3203. Bribing or the offer to bribe any ministerial officer of court, or auditor, juror, &c.
3204. On charge of bribing a juror, it is not necessary that the juror should have been sworn.
3205. Receiving of bribes by jurors, &c.
3206. Stocking of jurors by sheriff or other officer.
3207. Bribing or offering a bribe to officer, to induce him to stock a jury.
3208. Officer conniving at the offence specified in the two preceding sections.
3209. Personating another in becoming bail, confessing any judgment, &c.
3210. Officers voluntarily permitting prisoners charged with indictable offences to escape.
3211. Officers negligently permitting prisoners charged with indictable offences to escape.
3212. Officers refusing to execute criminal process, or to receive in custody any person lawfully committed.
3213. Jailer refusing to receive into custody any person lawfully committed on a criminal charge.
3214. Conveying into jail instruments, &c., to facilitate escape of prisoners on charge of felony.
SEC.
3215. Assisting prisoners confined on any other charge to escape.
3216. Assisting person to escape from the custody of officer, or person in charge.
3217. Prisoner escaping from jail may be retaken, and the period between his escape and arrest not to be computed in the term of his imprisonment.
3218. Resistance to officers in serving process.
3219. Running off or concealing slave guilty of or charged with a capital offence, with intent, &c.,
3220. Concealing felonies, or abstaining from prosecution.
3221. A trial may be had under the two preceding sections, although the person guilty of original offence not tried.
3222. Conspiracies to commit indictable offences.
3223. What agreements constitute conspiracies.
3224. No conspiracies except those specified in the two preceding sections are indictable.
3225. Definition and punishment of extortion.
3226. Refusing to arrest offender on command of magistrate, or resisting person acting under such command.
3227. Concealing or aiding felons after commission of offence.
3228. Only such offenders as are specified in the preceding section can be accessories after the fact.
3229. Accessory after the fact may be indicted, &c., if principal felon dead, or fled from justice.

Perjury.

§ 3197. Any person who willfully and corruptly swears or affirms falsely in regard to any material matter or thing, upon any oath or affirmation required or authorized by law, is guilty of perjury.

On an indictment for felony.

On any other indictment.

§ 3198. Any person who commits perjury on the trial of an indictment for felony, must, on conviction, be imprisoned in the penitentiary not less than seven or more than twenty years; and perjury committed under any other circumstances, or upon any other occasion, is punishable by imprisonment in the penitentiary not less than two or more than five years.

Subornation of.

§ 3199. Any person who corruptly procures another to swear falsely in any case, or upon any occasion, in or con-

cerning which perjury may be committed, is guilty of subornation of perjury, and must be punished by imprisonment in the penitentiary for the period for which the party suborned, was liable to be imprisoned.

Indictment for perjury.

§ 3200. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom the oath alleged to be false was taken; and that the court or person before whom it was taken, had authority to administer it, with the necessary allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected; nor the commission or authority of the court or person before whom the perjury was committed.

Bribery of executive, legislative or judicial officers.

§ 3201. Any person who corruptly offers, promises, or gives to any executive, legislative, or judicial officer, after his election or appointment, either before or after he has been qualified, any gift, gratuity, or thing of value, with intent to influence his act, vote, opinion, decision, or judgment, on any matter, cause or proceeding, which may be then pending, or which may be by law brought before him in his official capacity, must, on conviction, be imprisoned in the penitentiary not less than two or more than ten years.

Receiving bribes by such officers.

§ 3202. Any executive, legislative or judicial officer, who corruptly accepts, or agrees to accept, any gift or gratuity, or thing of value; or any promise to make any gift, or do any act beneficial to such officer, under an agreement, or with an understanding, that his vote, opinion, or judgment is to be given in any particular manner, or upon any particular side of any question or proceeding, which is, or may by law be brought before him in his official capacity; or that in such capacity he is to make any particular appointment, must, on conviction, be punished by imprisonment in the penitentiary not less than two or more than ten years.

Of ministerial officers, jurors, &c.

§ 3203. Any person who corruptly gives, offers, or promises to any of the ministerial officers of the courts of law or chancery, or to any auditor, juror, arbitrator, umpire, or referee, any gift, gratuity, or thing of value, with intent to bias the mind or influence the decision of such ministerial officer or auditor, juror, arbitrator, umpire, or referee, in relation to any cause or matter which is pending in either of said courts, or for the decision of which such arbitrator, umpire or referee has been chosen or appointed, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Not necessarary that juror should have been sworn.

§ 3204. For the conviction of a defendant charged with the bribing or the offer to bribe a juror, under the preceding section, it is not necessary that such juror should actually have been sworn or qualified; but it is sufficient that he has been summoned under legal authority.

§ 3205. Any person summoned as a juror, or appointed

an auditor, arbitrator, umpire or referee; or any ministerial officer, in any court, who corruptly takes any thing to give his verdict, award or report, or corruptly receives any gift or gratuity whatever, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. Ministerial officers, &c., receiving bribes.

§ 3206. Any sheriff or other officer having a discretion in summoning jurors, who summons any person with intent to produce a result favorable to any party having a cause in the court in which such person is summoned, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. Stocking juries.

§ 3207. Any person who gives, offers, or promises any gift, gratuity, or thing of value, to any sheriff or other officer, to induce him to summon a jury, or juror, with the intent to produce a result favorable to either party, in any cause pending in any court, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. Bribe for stocking juries.

§ 3208. Any sheriff, or officer acting as sheriff, who is knowing to and connives at the commission of the offence described in the two preceding sections, by any constable, bailiff, or by any deputy sheriff, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. Conniving at by sheriff, &c.

§ 3209. Any person who falsely personates another, and in such assumed character becomes bail or security for any party in any proceeding, civil or criminal, before any court, magistrate or officer authorized to take such bail; or confesses any judgment, or acknowledges the execution of any conveyance, or does any act in the course of any suit, proceeding or prosecution, whereby the person so personated may be made liable for the payment of any debt, damages, costs, or sum of money, or his rights or interest in any way affected, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years. Personating bail, &c. Confessing judgment, acknowledging conveyance, &c.

§ 3210. Any sheriff, or other officer, or persons having the legal custody of any person charged with, or convicted of, an indictable offence, who voluntarily permits such person to escape, must, on conviction, be imprisoned in the penitentiary not less than two or more than twenty years. Voluntary escapes.

§ 3211. Any sheriff, or other officer, who through negligence, suffers any person in his custody charged with, or convicted of, an indictable offence to escape, must, on conviction, be fined not less than two hundred or more than one thousand dollars. Negligent escapes.

§ 3212. Any sheriff, or other officer, who willfully or corruptly refuses to execute any lawful proces which it is his duty to execute, requiring the arrest of any person charged with a criminal offence, or willfully or corruptly omits to execute such process, by which such person escapes; or willfully or corruptly refuses to receive in any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein on any criminal charge or con- Refusing to serve process or receive prisoner in jail.

viction, or on any lawful process whatever, on conviction, must be fined not less than five hundred or more than two thousand dollars.

Or into custody.

§ 3213. Any jailor, or other officer, who willfully refuses to receive into his custody any person lawfully committed thereto, on any criminal charge or conviction, must be fined not more than five hundred dollars.

Conveying instruments into jail, or aiding in escapes from jail for felony.

§ 3214. Any person who conveys into the county jail or other place of confinement, other than the penitentiary, any disguise, instrument, arms, or other thing useful to aid any prisoner in his escape, with intent to facilitate the escape of any prisoner lawfully committed to or detained in such jail, or place of confinement, and on the charge or convicted of felony; or who in any other way, or by any other act, assists any such prisoner to escape, whether such escape be effected or attempted or not, must, on conviction, be imprisoned in the penitentiary not less than two or more than ten years.

Aiding in escapes from jail for other offences.

§ 3215. Any person who does any act with intent to assist any person lawfully committed to any county jail, or other place of confinement, for any other cause than is specified in the preceding section, to escape, whether such escape is effectual or not; or who, with such intent, carries into such jail or place of confinement, any disguise, instrument, arms, or other thing, useful to facilitate the escape of any person so committed, with intent to facilitate his escape, whether such escape is effected, or attempted or not, must, on conviction, be fined not more than one thousand dollars.

Aiding in escapes from custody of officers.

§ 3216. Any person who does any act with the intent to assist any prisoner in escaping, or attempting to escape, from the custody of any officer or person having the lawful charge of such prisoner, upon any criminal charge or conviction, must be punished as if he had aided or assisted such prisoner in an escape, or attempt to escape from the county jail.

Prisoner escaping may be retaken, &c.

§ 3217. Any person confined in a county jail, who escapes therefrom, may be pursued, taken and again imprisoned, notwithstanding the term for which he was sentenced has expired, at the time when he is taken; and he must remain so imprisoned until discharged by due course of law: and the period elapsing between his escape and arrest must not be computed as any portion of the term for which he was sentenced to imprisonment.

Resisting process.

§ 3218. Any person who knowingly and willfully opposes or resists any officer of the state, in serving or attempting to serve or execute, any legal writ or process, must, on conviction, be fined not less than fifty or more than one thousand dollars; and may be imprisoned, not exceeding six months.

Concealing or running slaves guilty of or charged with capital offences.

§ 3219. Any master or other person in charge of a slave, guilty of, or legally charged with the commission of any capital crime, who with the intent to prevent such slave from being brought to justice, conceals or carries him away, or causes him to be concealed or carried away; and any person knowingly aiding and assisting therein, must, on conviction, be

fined in the sum of one thousand dollars, or imprisoned in the penitentiary for two years, at the discretion of the jury.

Compounding or concealing felonies.

§ 3220. Any person having knowledge of the commission of a felony, who takes any money or property of another, or agrees to take any money or property to compound or conceal such felony, or to abstain from any prosecution therefor, must, on conviction, be fined not more than two thousand dollars.

Indicted and tried though original offender not indicted.

§ 3221. An indictment may be preferred and tried, under the two preceding sections, though the person guilty of the original offence has not been indicted or tried.

Conspiracies. 6 Ala., 765.

§ 3222. Any two or more persons conspiring, either to commit any indictable offence, or falsely and maliciously to indict another for any such offence, or to procure another to be charged with, or arrested for any such offence, or falsely to move or maintain any suit; or to cheat and defraud any person of any property by means in themselves criminal, or by any means which would amount to a cheat; or to obtain property by false pretences; or to commit any act injurious to the public health, to public morals, to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the law, must, on conviction, be fined not exceeding one thousand dollars, and may be imprisoned not exceeding six months.

What are conspiracies

§ 3223. No agreement except to commit a felony on the person of another, or to commit the crime of arson in the first degree, or burglary, must be deemed a conspiracy, unless some act, besides such agreement, be done to effect the object thereof.

No other conspiracies punished.

§ 3224. No other conspiracies, except such as are enumerated in the two preceding sections, can be proceeded against by indictment.

Extortion.

§ 3225. Any justice, clerk, sheriff, or other officer, authorized by the laws of this state to receive fees for services rendered by him in his official capacity, who knowingly takes for services not actually rendered, other or greater fees than are by law allowed, for any services done by him, is guilty of extortion, and, on conviction, must be fined not less than twenty or more than five hundred dollars; but this section does not apply to fees for making a complete record, unless greater fees are received for making such record than he is by law entitled to.

Refusing to obey magistrate in arresting offender.

§ 3226. If any justice, or conservator of the peace, upon view of any breach of the peace, or other offence proper for his cognizance, requires any person to apprehend and bring before him the offender, any person so required, who refuses and neglects to obey such justice or conservator of the peace, must, on conviction, be fined not less than fifty or more than three hundred dollars; and any one assaulting, beating or resisting such person, acting in obedience to the command of such justice or conservator of the peace, with a knowledge of such command, is guilty in the same manner as if

he had assaulted, beat or resisted an officer in serving or executing legal process, and, on conviction, must be punished as such offences are punished.

Accessories after the fact

§ 3227. Every person except those occupying the legitimate relation of parent, child, brother, sister, husband or wife to any person who has committed a felony, who conceals such offender, after the commission of such offence, or gives such offender any other aid, knowing that he has committed such offence, and to enable him to avoid or escape from arrest, trial, conviction or punishment, must, on conviction, be fined not more than one thousand dollars, and may be imprisoned in the county jail not more than six months.

Punishment.

No others are accessories after the fact

§ 3228. No other offenders except those provided for by the preceding section, must be deemed or punished as accessories after the fact.

Tried if principal dead or fled from justice.

§ 3229. An accessory after the fact, may be indicted, tried and convicted before the principal, if the principal felon is dead, or has fled from justice, on alleging such fact in the indictment.

ARTICLE V.

Of offences against public morality and decency.

SEC.
3230. Administering drugs or using instruments to produce abortion.
3231. Living in adultery or fornication.
3232. Definition of, and punishment of bigamy.
3233. When husband and wife absent five years, provisions of preceding section do not apply.
3234. Persons within the prohibited degrees, marrying or living in adultery.
3235. Crimes against nature.
3236. Removing bodies from grave for dissection or sale, &c.
3237. Cases to which the preceding section does not apply.
3238. Purchasing bodies disinterred contrary to law.
3239. Violating graves to remove body for sale, or for the purpose of stealing.
3240. Mutilating dead bodies.
3241. Preceding section does not apply to dissections.
3242. Injuring, defacing, &c., any grave stone, &c., any fence about the tomb, or any tree, plant, &c.
3243. Playing with cards or dice, &c., at certain places.
SEC.
3244. What is necessary to charge in the indictment.
3245. Tavern keepers knowingly permitting gaming on their premises.
3246. Solicitor's duty to summons witnesses in gaming cases to go before grand jury.
3247. What such witnesses are required to answer.
3248. Witness refusing to attend and testify, how punished.
3249. Keeping or exhibiting gaming tables.
3250. Duties of judicial and executive officers in relation to such offence.
3251. Betting at gaming tables.
3252. Indictments for keeping or exhibiting gaming tables.
3253. Owner or occupant of houses permitting gaming table to be kept therein.
3254. Setting up lotteries without authority.
3255. Betting with minors.
3256. Playing cards with slaves or free negroes.
3257. Disturbing public worship.

Administering drugs or using instruments to produce abortion.

§ 3230. Any person who willfully administers to any pregnant woman, any drug or substance, or uses and employs any instrument or other means to procure her miscarriage, unless the same is necessary to preserve her life, and done

for that purpose, must, on conviction, be fined not more than five hundred dollars, and imprisoned, not less than three or more than twelve months.

Living in adultery or fornication. 6 Ala., 864; 14 Ala., 608; 9 Ala., 283.

§ 3231. If any man and woman live together in adultery or fornication, each of them, on the first conviction, must be fined in a sum not less than one hundred dollars, and may be imprisoned not exceeding six months; for the second conviction with the same person, the offender must be fined not less than three hundred dollars, and imprisoned not more than twelve months; upon a third, or any subsequent conviction, with the same person, the offender must be imprisoned in the penitentiary for two years.

Bigamy.

§ 3232. If any person who has a former wife, or husband living, marries another; or if such person continue to cohabit with such second husband or wife, in this state, except in the cases mentioned in the following section, he or she is guilty of polygamy, and must be imprisoned in the penitentiary not less than two or more than five years.

Where husband or wife absent five years.

In case of divorce.

§ 3233. The provisions of the preceding section, do not extend to any person whose husband or wife has remained absent for five years together, the party marrying again, not knowing the other to be living in that time; nor to any person, by reason of any former marriage, which has been dissolved by a decree of a competent court, when such person was not the guilty cause of such divorce.

Incest.

§ 3234. Persons within the degree of consanguinity or relationship within which marriages are declared by law to be incestuous and void, who intermarry, or live in a state of adultery with each other, knowing of such consanguinity, must, on conviction, be imprisoned in the penitentiary not less than two or more than seven years.

Crimes against nature

§ 3235. Crimes against nature, either with mankind, or any beast, are punishable by imprisonment in the penitentiary not less than two or more than ten years.

Removing bodies from grave.

§ 3236. Any person who removes the dead body of any human being from its place of interment, for the purpose of dissection, or for sale, or from wantonness, must, on conviction, be fined not less than one hundred or more than five hundred dollars; and may be imprisoned for not more than six months.

Exceptions.

§ 3237. The provisions of the preceding section do not extend to regular physicians, to whom the bodies of criminals executed for capital offences are delivered, pursuant to law; or to dissections of slaves by consent of their master, or of other persons by the consent of their relatives.

Buying dead bodies.

§ 3238. Any person who purchases or receives from any other person the dead body of any human being, knowing the same to have been disinterred contrary to law, must, on conviction, be fined not less than one hundred or more than five hundred dollars.

Opening grave to remove body, or to steal.

§ 3239. Any person who opens any place of interment, with the intent to remove the dead body of any human being

for the purpose of selling the same, or for the purpose of stealing the coffin, or any part thereof; or the vestments, or other articles interred with any human body, must, on conviction, be fined not more than five hundred dollars, and may be imprisoned not more than one year in jail, or imprisoned in the penitentiary not less than two years, at the discretion of the jury.

Mutilating dead body.

§ 3240. Any person who wantonly mutilates the dead body of any human being, must, on conviction, be fined not more than five hundred dollars, and may be imprisoned not more than one year.

Exceptions.

§ 3241. The provisions of the preceding section do not apply to dissections.

Injuring tomb stone, enclosures, trees, &c.

§ 3242. Any person who willfully or maliciously injures, defaces, removes, or destroys any tomb, monument, grave stone, or any other memorial of the dead; or any fence or enclosure about any tomb, monument, grave stone, or memorial; or willfully destroys, removes, cuts, breaks, or injures, any tree, shrub, or plant, within such enclosure, must, on conviction, be fined not less than one hundred or more than five hundred dollars, and may be imprisoned not more than twelve months.

Gaming. 3 Ala., 14; 13 Ala., 602; 12 Ala., 492; 15 Ala., 383.

§ 3243. If any person plays at any game with cards, or dice, or with any device or substitute for the same, at any tavern, inn, store house for retailing spirituous liquor, or house or place where spirituous liquor is retailed or given away; or any public house, or highway, or in any other public place; or in any out house, where people resort, such person, on conviction, must be fined not less than twenty, or more than fifty dollars.

Indictments for.

§ 3244. In prosecutions under the preceding section, it is sufficient for the indictment to charge, that the defendant played at cards, or dice, or at some device or substitute for cards or dice, in one or more of the places in such section enumerated; or in a public place, without stating what description of game was played; and it is not necessary to prove what the game was called, or that any money, or other thing, was bet.

Allowing gaming on premises.

§ 3245. Every tavern keeper, proprietor, or superintendant of any other public house, or owner or proprietor of any out house where people resort, or unlicensed retailers of spirituous liquors, who knowingly suffers any game embraced in section 3243 to be exhibited or played in his tavern, inn, or house for retailing spirituous liquors; or in any house, shelter, or apartment attached or belonging thereto; or in such out house, or in any place on his premises, must, on conviction, be fined not less than fifty or more than three hundred dollars.

Duty of solicitors in relation to.

§ 3246. Solicitors have authority, and it is their duty, to summon any person to appear before the grand jury, to give evidence of any gaming in violation of the laws of the state against that offence; and such summons may be issued before or during court.

What witness may be required to answer.

§ 3247. Such witnesses may be required to answer as to any gaming within their knowledge committed at any time within the preceding twelve months, at any of the places enumerated in section 3243, or in any public place, without in the first instance inquiring as to any specific offence; but no witness must be indicted for any game in relation to which he testified before the grand jury; and any member of the grand jury may be a witness to establish such fact.

Witness refusing to attend and testify.

§ 3248. If any person summoned as a witness refuses to attend and testify, in obedience to such summons, without a good excuse, to be determined by the court, he may be proceeded against for contempt, and is also guilty of a misdemeanor; and, on conviction, must be fined not less than twenty or more than three hundred dollars, and may be imprisoned not more than three months.

Exhibiting gaming table 8 Port., 434.

§ 3249. Any person who keeps or exhibits any gaming table of any kind for gaming, or is interested or concerned in the keeping or exhibition thereof, must, on conviction, be imprisoned in the penitentiary for two years.

Duty of judicial and executive officers to arrest, &c.

§ 3250. It is the duty of judges of the circuit and probate courts, justices, mayor, or intendant of any town or city, as well as all sheriffs, constables, marshals, or other executive officers of any city or town, who receive information, or have good cause to believe, that any person is guilty of the offence specified in the preceding section, to cause such person to be arrested and brought before such judge or justice, mayor, intendant, or some other magistrate having jurisdiction; and if it appear from the evidence that such person has been guilty of such offence, he must give bail for his appearance at the next circuit court to answer such offence, and, failing so to do, must be committed to jail.

Betting at gaming tables. 7 Por., 463.

§ 3251. Any one who bets at any gaming table embraced in the provisions of section 3249, upon conviction, must be fined not more than one hundred dollars.

Indictment for keeping gaming table

§ 3252. In prosecutions under section 3249, it is sufficient to charge, that the defendant kept, or exhibited, or was interested or concerned in keeping or exhibiting, a gaming table, for gaming, without describing such table more particularly, or alleging in what manner the defendant was concerned in the keeping or exhibiting; or alleging or proving that any money was bet at such table.

Owner or occupant allowing gaming table to be kept on his premises.

§ 3253. Any owner or occupant of any house or out house, or other building, booth, or tent, who knowingly permits any gaming table, for gaming, to be kept, or exhibited in his house out-house, booth, or tent, must be fined not less than three hundred, or more than two thousand dollars; but if such owner or occupant gives information to any magistrate of the county in which such gaming table was kept or exhibited, against any person keeping or exhibiting, or concerned in keeping or exhibiting, such table, within six days after the same comes to his knowledge, he is not liable under the provisions of this section.

Lotteries.

§ 3254. Any person setting up, or concerned in setting up or carrying on any lottery, without the legislative authority of this state, must, on conviction, be fined not less than one hundred, or more than two thousand dollars.

Betting with minors.

§ 3255. Any person of full age, who bets any money, or thing of value, with a minor; or allows a minor to bet at any gaming table exhibited by him, or in which he is interested or concerned, must, on conviction, be fined not less than three hundred dollars, and imprisoned not less than three months.

Playing cards with slaves or free negroes.

§ 3256. Any white person who plays at cards with any slave or free negro, must, on conviction, be fined not less than fifty dollars, and imprisoned not less than three or more than six months.

Disturbing public worship.

§ 3257. Any person who willfully interrupts or disturbs any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or by any other act at or near the place of worship, must, on conviction, be fined not less than twenty or more than two hundred dollars, and may be imprisoned not more than six months.

ARTICLE VI.

Of miscellaneous offences.

SEC.
3258. The fraudulent packing of cotton.
3259. Exhibiting false samples.
3260. Cutting or tearing bales of cotton without consent of the owner.
3261. Taking cotton from the bale without consent of the owner.
3262. Refusing to deliver cotton samples to the owner.
3263. Defendant may show that such samples have been destroyed, &c.
3264. Buying cotton taken from bale without consent of the owner.
3265. Factors, &c., allowing cotton to be taken from the bale and retained, &c.
3266. Factors appropriating cotton with intent to defraud owner.
3267. Adulteration of sugar.
3268. Making or issuing paper to circulate as money.
3269. Signing or countersigning any such paper.
3270. Passing or circulating any such paper.
3271. Passing or circulating any foreign bank bill under five dollars.
3272. Indictments under the preceding section.
3273. Carrying bowie knife, &c., or air guns concealed.
SEC.
3274. Or pistol, or fire-arms, except under certain circumstances.
3275. Indictments under the preceding section.
3276. Publishing any one for not fighting, &c.
3277. Punishment of printer or publisher for refusing to give evidence.
3278. Selling or delivering poisons without labels.
3279. Selling poisons to slaves or children.
3280. Selling or giving liquor to students, &c.
3281. Selling or giving liquor to minors after notice from parents, &c.
3282. Licensed retailers selling liquor to, or trading, &c., with slaves, after taking oath.
3283. Selling or giving liquor to slaves, except on orders in writing, &c.
3284. Preceding section applies to licensed retailers.
3285. Trading with slaves.
3286. On trial for trading with slaves, certain facts presumptive evidence of guilt.
3287. Employing slave or free negro to assist in selling spirits, &c.

SEC.
3288. Duty of magistrates in relation to laws against retailing and trading with slaves.
3289. Employing slave or free negro to sample cotton.
3290. Defendant may show in defence that he was the owner of the cotton.
3291. Prosecuting suits in the name of another without his consent.
3292. Refusing to obey summons by an officer to aid in arrest.
3293. Duty of the officer to present the person so refusing.

Frauds in packing cotton.

§ 3258. Any person who fraudulently packs or bales any cotton, on conviction, must be fined not less than fifty or more than five hundred dollars and may be imprisoned not more than six months.

Exhibiting false samples.

§ 3259. Any person who fraudulently exhibits any false sample of any cotton, or other article or commodity, by means whereof any person is injured, must, on conviction, be fined not less than one hundred dollars, and may be imprisoned not more than six months.

Cutting cotton bags without consent of owner, &c.

§ 3260. Any person who willfully cuts, tears, or otherwise opens any bale of cotton, without the direction or consent of the owner, agent, or consignee of such cotton, must, on conviction, be fined not less than ten or more than one thousand dollars.

Taking cotton from bale

§ 3261. Any person who knowingly and unlawfully takes without the direction or consent of the owner, agent, or consignee, from any bale of cotton, any part thereof, must, on conviction, be imprisoned in jail not less than six or more than twelve months.

Converting cotton sample to their own use.

§ 3262. Any person authorized to sample cotton, who with intent to defraud, converts such samples to his own use, or refuses to deliver such samples to the owner, agent, or consignee, on demand, within thirty days after such samples are taken, must, on conviction, be adjudged guilty of a misdemeanor, and be punished by fine and imprisonment at the discretion of the jury.

Defences.

§ 3263. In trials on indictments under the preceding section, the defendant may exonerate himself from the delivery of the sample, on demand of the owner, agent or consignee, by showing to the satisfaction of the jury that such samples have been destroyed without his agency, or that they have been stolen or taken by legal process out of his possession.

Buying cotton taken from bale without owner's consent, &c.

§ 3264. Any person who knowingly, and with intent to defraud, buys or receives any cotton taken from any bale, without the direction or consent of the owner, agent, or consignee, is guilty of a misdemeanor, and must, on conviction, be fined, and imprisoned at the discretion of the jury.

Factors, &c., permitting cotton to be taken from bale.

§ 3265. Any factor, commission merchant, consignee, or agent, having the control of any cotton, who authorizes, or knowingly permits any person to take from any bale of cotton any part thereof, and to retain the same to his own use, or to make any other disposition of the same, except to deliver the same to such factor, commission merchant, consignee, or agent, must, on conviction, be fined not less than fifty or more than one thousand dollars.

Factor appropriating cotton taken from bale.

§ 3266. Any factor, commission merchant, or agent, having the control of cotton, who appropriates to his own use any cotton taken from any bale under his control, with intent to defraud the owner thereof, must, on conviction, be punished, as if he had feloniously stolen such cotton.

Adulterating sugar.

§ 3267. Any person who mixes any foreign matter or thing with sugar, so as to deteriorate the quality thereof with intent to injure or defraud, must, on conviction, be fined not less than fifty or more than two hundred dollars, and may be imprisoned not more than three months.

Making or emitting bills for circulation.

§ 3268. Any person, private corporation, or association, who without authority of law, makes or emits any paper to answer the purposes of money, or for general circulation, such person, and each individual of such corporation or association, on conviction, must be fined not less than twenty or more than one hundred dollars, and may be imprisoned not more than twelve months.

Signing bills for circulation.

§ 3269. Any person in this state who signs any paper to be put in circulation as money, except under the authority of this state, or countersigns the same, must, on conviction, be fined in a sum not less than one hundred or more than five hundred dollars; and the signature of such person to any such paper must be taken as genuine, unless the fact of signing be denied on oath by the defendant.

Passing such paper.

§ 3270. Any person who passes or circulates any paper issued to answer the purposes of money, without authority of law, must, on conviction, be fined not less than twenty or more than one hundred dollars.

Passing bills under five dollars.

§ 3271. Any person who passes or circulates in this state, any bank bill of a less denomination than five dollars, not issued under the authority of this state, must, on conviction, be fined not exceeding fifty dollars.

Indictment for.

§ 3272. An indictment under the preceding section, which charges that the defendant did pass or circulate a bank bill under the denomination of five dollars, not issued under the authority of this state, is sufficient, without describing such bank bill; and proof that such bill on its face purported to be issued by the authority of any other state, or country, or by any bank, or corporation out of this state, or by any bank or corporation known to be out of this state, is sufficient without further proof.

Concealed weapons.

§ 3273. Any one who carries concealed about his person a bowie knife, or knife or instrument of the like kind or description by whatever name called, or air gun, must, on conviction, be fined not less than fifty or more than three hundred dollars.

The same.

§ 3274. Any one who carries concealed about his person a pistol, or any other description of fire arms, not being threatened with, or having good reason to apprehend an attack, or travelling, or setting out on a journey, must, on conviction, be fined not less than fifty nor more than three hundred dollars.

§ 3275. In an indictment under the preceding section, it is sufficient to charge that the defendant carried concealed about his person a pistol or other description of fire arms; and the excuse must be made out by the defendant, to the satisfaction of the jury. Indictment for. Excuse.

§ 3276. Any person, who in any newspaper, handbill, or other advertisement, written or printed, publishes or proclaims any person as a coward, or uses any other opprobrious or abusive language for not accepting a challenge to fight a duel, or for not fighting a duel, must, on conviction, be fined not less than two hundred or more than five hundred dollars, and imprisoned not less than six or more than twelve months. Publishing another as a coward, &c.

§ 3277. The publisher or printer of any such newspaper, or handbill, or other publication, may be required to testify against any defendant indicted under the preceding section; and refusing to give evidence, must be fined five hundred dollars, and imprisoned until such fine is paid, and also imprisoned until he shall testify. Printer to give evidence. Penalty for refusing.

§ 3278. Any person who sells and delivers any poisonous substance, without having the word "poison" written or printed on the label attached to the vial, box or parcel in which the same is sold; or sells and delivers any tartar emetic, laudanum or morphine, without having the common name thereof, written or printed upon a label attached to the vial, box or parcel, containing the same, must, on conviction, be fined not more than one hundred dollars. Selling poisons without labels.

§ 3279. Any person who sells to any slave, or free child under ten years of age, any drug, poisonous in its nature, without an order in writing from the owner or master of such slave, or the parent, guardian, or person standing in that relation to such child, designating the drug, either by name or by its effects, must, on conviction, be fined not more than two hundred dollars, and may be imprisoned not more than three months. Selling poisons to slaves or children.

§ 3280. Any licensed retailer or other person, keeping fermented, vinous or spirituous liquors for sale, who sells, gives or delivers to any student of any college, or pupil of any school or academy, or to any other person for the use of such student or pupil, any of such liquors, knowing the use for which it was intended, without the consent of the parent or guardian, or the person having the charge of such student or pupil, such retailer, or the person so selling, giving or delivering, must, on conviction, be fined not less than fifty or more than five hundred dollars. Selling or giving liquor to students, &c.

§ 3281. Any licensed retailer or other person who sells, gives, or delivers to any minor any of the liquors specified in the preceding section, after notice from the parent, guardian, or person in charge of such minor, forbidding such sale, gift, or delivery, must, on conviction, be fined not less than fifty or more than five hundred dollars. To minors.

§ 3282. Any licensed retailer, who, after taking the affidavit prescribed in section 1057, knowingly sells any vinous Licensed retailer trad-

ing with slaves.

or spirituous liquors to any slave; or knowingly sells to or purchases from any slave any article or commodity, without the permission of the master or overseer of such slave; or knowingly permits the same to be done by his partner, clerk, or any other person about his premises; or knowingly permits any gaming to be carried on on his premises, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Selling or giving liquor to slaves.

§ 3283. Any person who sells, gives, or delivers to any slave any vinous or spirituous liquor, except on an order in writing, signed by the overseer or master of such slave, specifying the quantity to be sold, given, or delivered, must, on conviction, be fined not less than fifty dollars.

The same.

§ 3284. The provisions of the above section apply to licensed retailers as well as other persons.

Trading with slaves. 19 Ala., 19.

§ 3285. Any person who sells to or buys or receives from any slave, any other article or commodity of any kind or description, without the consent of the master, owner, or overseer of such slave, verbally or in writing, expressing the articles permitted to be sold to, or bought or received from such slave, first obtained, must, on conviction, be fined in not less than ten or more than two hundred dollars, and may be imprisoned not more than six months.

Evidence on indictment.

§ 3286. Upon the trial of indictments under the preceding and section 3283, evidence that the slave was seen in the night time, or on Sunday, going into a place where spirituous or vinous liquors or merchandize are sold, with an article of traffic, and coming out without the same; or that such slave was seen at such time, or on such day, immediately after coming out of such place, in possession of spirituous or vinous liquor, or merchandize of any kind, is presumptive evidence of the guilt of the defendant.

Employing slave or free negro to draw off or sell.

§ 3287. Any person keeping spirituous liquor for sale, who employs any slave or free person of color in drawing off or selling such liquor, must, on conviction, be fined not less than twenty-five or more than fifty dollars.

Duty of magistrate in relation to laws against retailing or trading with slaves.

§ 3288. Any justice or magistrate, whenever he has good reason to believe, or upon information on oath that any of the laws of this state against retailing or trading with slaves have been violated by any person, must forthwith issue a warrant of arrest against such person, and if the evidence proves the offence, must bind him over to answer therefor at the next circuit court, and on his failing to give bond must commit him.

Permitting slave or free negro to sample cotton.

§ 3289. Any person who employs or knowingly permits any slave or free person of color to sample any cotton, must, on conviction, be fined not less than fifty or more than one thousand dollars.

Owner may.

§ 3290. In indictments under the preceding section, the defendant may show in defence he was the owner of the cotton.

Prosecuting suits in the name of an-

§ 3291. Any person who prosecutes a suit in any of the courts in this state, in the name of another person, without

his consent, must, on conviction, be fined not less than five hundred dollars. other. Exceptions.

§ 3292. The provisions of the preceding section do not apply to a person having the beneficial interest using the name of the person having the legal right, in cases where he cannot bring the action in his own name. Refusing to obey summons of officer.

§ 3293. Any person summoned by any sheriff, or other officer having authority, for the purpose of enabling such officer to make an arrest, or to execute any duty devolving upon him under any law in relation to public offences, who refuses obedience to such summons, must, on conviction, be fined not less than fifty or more than three hundred dollars. Duty of the officer.

§ 3294. It is the duty of the officer summoning such person to present the offender to the next grand jury, and failing so to do, he must, on conviction, be fined not less than twenty dollars.

ARTICLE VII.

Offences against slaves.

Sec.		Sec.	
3295.	Causing death of by whipping, is murder in the first degree.	3298.	Indictments under preceding section.
3296.	Causing death by whipping, &c., without intention to kill, murder in the second degree.	3299.	Defendant entitled to a jury two-thirds of whom are slave holders.
3297.	Inflicting or allowing cruel punishment, &c., failing to provide food, raiment, attention in sickness, &c.	3300.	Assaults by any other person than the master.

§ 3295. Any person who with malice aforethought causes the death of a slave, by cruel whipping or beating, or by any inhuman treatment, or by the use of any weapon in its nature calculated to produce death, is guilty of murder in the first degree. Death of a slave by whipping, &c.

§ 3296. Any owner, overseer, or other person having the right to correct any slave, who causes the death of such slave by cruel whipping or beating, or by any other cruel or inhuman treatment, or by the use of any instrument in its nature calculated to produce death, though without any intention to kill, is guilty of murder in the second degree, and may be guilty of murder in the first degree. Without intention to kill.

§ 3297. Any master, or other person standing towards the slave in that relation, who inflicts, or allows another to inflict on him any cruel punishment, or fails to provide him with a sufficiency of healthy food, or necessary clothing, or to provide for him properly in sickness or old age, or treats him in any other way with inhumanity, on conviction thereof must be fined not less than twenty-five or more than one thousand dollars. Cruel punishments; not feeding or clothing, &c.

§ 3298. In indictments under the preceding section, it is sufficient to charge that the defendant did inflict on a slave Indictments.

any cruel punishment, or that he failed to provide him with a sufficiency of healthy food, or necessary clothing, or to provide for him properly in sickness or old age; or if for any other species of inhuman treatment, it may be charged that he treated such slave with inhumanity, without specifying in what such inhumanity consists, and the jurors are the judges of what constitutes cruel punishment, a sufficiency of healthy food, necessary clothing, and proper provision in sickness and old age.

Jury of slave-holders.

§ 3299. On the trial of indictments under section 3297, the defendant is entitled to a jury, two-thirds of whom are slave-holders.

Assaults on slaves.

§ 3300. Any person other than the master, or person occupying that relation, who commits an assault and battery on a slave, without just cause or excuse, to be determined by the jury, is guilty of a misdemeanor.

ARTICLE VIII.

Of misdemeanors at common law, not provided for by the provisions of this code.

SEC. 3301. Misdemeanors at common law not expressly provided for, how punished.

Misdemeanors at common law not provided for.

§ 3301. All misdemeanors at common law, the punishment of which is not expressly provided for in this code, are indictable offences, and must, on conviction, be punished by a fine and imprisonment, the fine not to exceed two thousand dollars, in any case in which the party whose person or property has been injured, has a civil remedy; in all other cases, such an amount as the jury may assess, and the imprisonment not to exceed six months.

How punished.

ARTICLE IX.

Petty offences cognizable before a justice of the peace.

SEC.
3302. Compelling slave to perform certain labor on Sunday.
3303. Shooting, &c., and keeping open stores on Sunday.
SEC.
3304. Preceding sections not to apply to steamboats, &c.

Violating sabbath.

§ 3302. Any person who on Sunday compels his apprentice, servant, or slave, to perform any labor, except the customary household duties of daily necessity, comfort, or charity, must for each offence be fined, by any justice of the county, ten dollars.

§ 3303. Any person who engages in shooting, hunting, gaming, racing, or in any other sport, diversion, or pastime, on Sunday, or any merchant, or shop-keeper, except druggists, who keeps open store, or disposes of any goods on Sunday, for each offence must be fined, by any justice before whom complaint is made, twenty dollars. The same.

§ 3304. The provisions of the two preceding sections do not apply to steam boats, or other vessels navigating the waters of this state, or to any manufacturing establishment which requires to be kept in constant operation. Exceptions.

ARTICLE X.

Offences committed by slaves, and in certain cases by free persons of color, and proceedings in relation thereto.

SEC.
3305. Previous provisions of this title do not apply to slaves, but do to free persons of color, unless inconsistent with some other provision.
3306. Slave conspiring to rebel, or concerned in insurrection.
3307. Rape on white female by slave or free negro.
3308. Burglary by slave.
3309. Definition of dwelling house in the preceding section.
3310. Breaking or entering dwelling house by slave in the day time.
3311. Assaults by slaves with intent to rob, to poison, mayhems, &c., on white persons.
3312. Murder, manslaughter, or assault with intent to kill white persons.
3313. Arson by slave.
3314. Manslaughter of slave or free negro, by a slave.
3315. Perjury by a slave.
3316. Offences of a higher grade than petty larceny by slaves, and not punished capitally, how proceeded against and punished.
3317. Petit larceny, or other offences of less or same grade, by slaves.
3318. Duty of presiding judge when slave is a witness.
3319. Trial of slaves for capital offences by circuit court.
3320. Indictments against slaves for capital offences.

SEC.
3321. In case of rebellion, slave to be committed, and day set for trial.
3322. Notice given by justice to judge of probate and another justice, majority of whom constitute court.
3323. Sheriff to summon a jury of twenty-four persons, &c.
3324. Statement of the offence.
3325. Trial had at the court house, sheriff and clerk to attend.
3326. Subpœnas, how issued and executed.
3327. Value of slave to be assessed if found guilty of capital offence, and one-half of such value to be paid by the state to the owner.
3328. Owner to receive no compensation if offence committed through his fault.
3329. Counsel assigned by the court in certain cases, to slaves and free negroes.
3330. Sentence of slaves and free negroes on capital convictions.
3331. Slave sold for the costs, if not paid by the owner.
3332. Slaves bailable before conviction, except in certain cases.
3333. Who is entitled to bail a slave.
3334. Justices may discharge, bail or commit, slave.
3335. Judge of probate and circuit court may discharge, bail or commit slave, notwithstanding any previous order by justice.

§ 3305. The previous provisions of this title in relation to the punishment of and disqualification for the commission of offences, do not apply to slaves; the other provisions of this title apply to slaves, except so far as they are inconsistent Previous provisions do not apply to slaves.

with the other provisions of this code in relation to that class of persons, and with the character of the institution; free persons of color are subject to its provisions, except so far as they are excepted therefrom, either expressly, or by the application of a different law respecting them.

To free persons of color.

Rebellion.

§ 3306. Every slave who consults or conspires to rebel, or is in anywise concerned in an insurrection or rebellion of the slaves against the white inhabitants of this state, or the laws and government thereof, must, on conviction, suffer death.

Rape or attempt to ravish.

§ 3307. Every slave or free negro who commits, or attempts to commit, a rape on any white female, must, on conviction, suffer death.

Burglary.

§ 3308. Every slave who breaks into and enters a dwelling house in the night time, with the intention to steal or commit a felony, must, on conviction, suffer death.

Definition of dwelling house.

§ 3309. No building must be deemed a dwelling house, or any part thereof, unless some white person is in such house at the time the act is done or offence committed; and no building which is not joined to and parcel of such dwelling house, must be considered as included in the preceding section.

Breaking into dwelling house by day

§ 3310. Any slave who breaks into and enters a dwelling house in the day time, or any other building in the day or night time, must, on conviction, be punished by stripes, not exceeding one hundred, and by branding in the hand, one or both.

Assaults with intent to rob, mayhem, &c., to poison, &c.

§ 3311. Every slave who robs, or commits an assault and battery with intent to rob, any white person, or willfully maims, puts out an eye, or cuts or bites off the lip, ear, or nose, of any white person, or attempts to poison, or to deprive any white person of life, by any means not amounting to an assault, must, on conviction, suffer death.

Murder or assault with intent. Manslaughter.

§ 3312. Every slave who is guilty of murder, or of assault with intent to kill any white person, or who is guilty of the voluntary manslaughter of a white person, or the involuntary manslaughter of a white person, in the commission of any unlawful act, must, on conviction, suffer death.

Arson.

§ 3313. Every slave who willfully and maliciously sets fire to or burns any dwelling house, or out house appurtenant thereto, store house, office, banking house, ware house, or other edifice, public or private, corn crib, gin house, cotton house, stable, barn, cotton in the heap to the value of one hundred dollars, or in bale to any value, or any ship or steam boat, must, on conviction, suffer death.

Manslaughter of slave, free negro.

§ 3314. Every slave who is guilty of the manslaughter of a slave or free negro, must, on conviction, be punished by any number of stripes, not exceeding one hundred, or be branded in the hand, one or both, at the discretion of the jury.

Perjury.

§ 3315. Every slave who is guilty of the crime of perjury must, on conviction, be punished with stripes not exceeding one hundred, at the discretion of the jury, and be branded in the hand with the letter P.

Offences higher than petit larceny, but not capital.

§ 3316. All offences committed by a slave, of a higher grade than petit larceny, and not capitally punished, and which, if committed by a white person, are punished by imprisonment in the penitentiary, may be tried by the judge of the probate court and two justices of the peace, according to the provisions of sections 3322, 3323, 3324, 3325, 3326, and 3327, and the jury shall, by their verdict, direct the punishment to be inflicted, not to exceed one hundred lashes, and branding in the hand, one or both.

How tried.

Punishment.

Petit larceny and lower offences; how tried, &c.

§ 3317. For the offence of petit larceny, or any other offence of the same or less grade, any slave may be tried by a justice of the peace on warrant, and may be sentenced to receive any number of stripes, not exceeding one hundred; but no justice is authorized to inflict more than thirty-nine stripes, unless he associates with him two respectable freeholders, who concur in the propriety of the sentence.

Duty of judge when slave is sworn.

§ 3318. Whenever a slave is a witness in any cause, the presiding judge must explain to him the nature of the oath about to be administered, and also state to him the punishment for swearing falsely; it must direct him to be taken into custody, if the court before whom any slave is sworn has reason to believe he or she has sworn falsely, and as soon as practicable to cause a jury to be empanelled to try the fact; and if the slave is found guilty, the court must, without delay, cause the proper punishment to be inflicted.

Where and how tried for capital offences.

§ 3319. The trial of all slaves for capital offences must, except in the cases provided for by this chapter, be by the circuit court of the county having jurisdiction, and in the mode provided by law for the trial of white persons, except that the slave is allowed but twelve peremptory challenges, and the state but four, and at least two-thirds of the jury must be slaveholders.

Indictments for.

§ 3320. In indictments against slaves for capital offences, it is not necessary to allege the name of the owner, or that the slave belongs to any person.

In cases of insurrection, &c.

§ 3321. In cases of an actual or threatened rebellion or insurrection of slaves, any justice of the peace before whom a slave or free negro is brought, charged with a capital offence, if there is probable ground for believing him guilty of the offence charged, must commit him to jail, and may appoint a day for the trial of the offence, not more than fifteen days from the commitment.

The same.

§ 3322. Such justice must give notice of the day appointed, to the judge of probate, and some other justice, and to attend the trial, which notice may be served by the sheriff, or any constable; and if there is no judge of probate, or he is absent, some other justice must supply his place; and if neither attend, two other justices may be summoned, and a majority of the officers thus summoned constitute a court for the trial of the offender.

The same.

§ 3323. The justice making the commitment must also require the sheriff in writing to summon a jury, to appear at

the time appointed for the trial of the accused, possessing the qualifications of grand and petit jurors, under the provisions of Chapter six of Title two of this Part, to consist of twenty-four persons, at least two-thirds of whom must be slaveholders; and if the persons attending, so summoned, are exhausted by challenges or otherwise, the deficiency may be made up from the by-standers; but no person having an interest in such slave is a competent juror.

Statement of offence.

§ 3324. In all trials had under the three preceding sections, it is sufficient for the prosecuting officer to write out a brief statement of the offence, and sign his name thereto, to which the accused is required to plead, and failing to plead, the plea of not guilty must be entered.

Trial; where had.

§ 3325. The trial must be had at the court house of the county, and it is the duty of the sheriff and clerk of the circuit court to attend and enter the proceedings of record.

Subpœnas.

§ 3326. The clerk of the circuit court or committing magistrate, must issue subpœnas or other legal process, as well for the prisoner as the state; which must be executed by the sheriff, or any constable.

Value of slave to be assessed on conviction for capital offence.

§ 3327. Whenever on the trial of any slave for a capital offence, the jury returns a verdict of guilty, the presiding judge must cause the same, or another jury to be empannelled, and sworn to assess the value of such slave; the verdict must be entered on the minutes of the court, and the owner of such slave, or his personal representative, on producing to the comptroller a transcript from the records of the court, duly certified by the clerk, and the certificate of the sheriff, that such slave has been executed according to his sentence, is entitled to receive a warrant on the state treasurer for one-half the amount assessed by the jury, to be paid out of the fund assessed for that purpose.

One half value to be paid to owner.

If owner in fault he receives nothing.

§ 3328. Whenever the prosecuting officer has good cause to believe that the owner is to blame for the offence committed by the slave, it is his duty to introduce evidence to establish the fact; and if the jury so find, the master shall receive no compensation; and when a slave is executed on a charge of insurrection or rebellion, the owner is not entitled to receive from the state any compensation.

Counsel to be appointed.

Compensation.

§ 3329. In all trials of slaves for capital offences, if the owner refuses or neglects to employ counsel for his defence, the court must assign counsel for that purpose, who must be paid twenty dollars therefor, to be taxed as costs, for which execution may issue; and if any free negro, in a capital case, is unable to employ counsel, the court must assign counsel, who is entitled to a fee of twenty dollars, to be paid out of the state treasury.

Sentence.

§ 3330. If any slave or free person of color, is found guilty of a capital offence, the court must pronounce sentence, which must be executed in the manner prescribed by this code for white persons; and not more than twenty or less than ten days must elapse between the passing of sentence and the

execution, unless the trial is had in the circuit court, and points of law are reserved for the decision of the supreme court, in which case the same time is allowed as in case of white persons; or unless a writ of error is allowed under the provisions of Chapter twelve, of Title two of this Part, in which case the execution must be stayed as in case of white persons; but in case of a conviction for conspiracy, insurrection or rebellion, the court, if satisfied of the guilt of the defendant, and it is necessary for the public interest, may sentence him to be executed forthwith; and in such case the sentence must be executed accordingly.

In case of rebellion, &c.

§ 3331. In all convictions of slaves for any offence not capital, the slave is liable to be sold in ten days after conviction, for the costs of prosecution, by the sheriff or any constable, unless the costs are paid by his owner.

May be sold for costs.

§ 3332. Slaves are bailable before conviction, except for capital offences, when the proof is evident or the presumption great.

Bailable before conviction.

§ 3333. Any person entitled to the control or possession of such slave, may be allowed to bail him, in cases deemed bailable, upon giving such bond and surety as the judge or justice having jurisdiction may require.

Who may bail.

§ 3334. Justices of the peace, before commitment, have jurisdiction to commit to jail, bail or discharge, any slave charged with any offence, as the law or circumstances of the case may require.

Justices have jurisdiction.

§ 3335. Judges of probate and of the circuit courts have jurisdiction on application, to commit to jail, bail or discharge, any slave, as the justice of the case may require, notwithstanding any previous order made by a justice of the peace.

Judges of probate and circuit superior jurisdiction.

ARTICLE XI.

Of the duty of the sheriff in preserving the peace.

SEC.
3336. Duty of sheriff in suppressing affrays, &c.
3337. Commanders of military companies to obey his instructions, and act under his orders.
3338. Persons acting by command of officer in preventing offences, justified.

§ 3336. The sheriff is the principal conservator of the peace in his county, and it is his duty to suppress all affrays, routs, riots, unlawful assemblies and insurrections; to do which he may summon to his aid as many of the male inhabitants of the county as he thinks proper, and any military company or companies.

Sheriff conservator of the peace.

Powers.

§ 3337. Any officer in command of a military company, must obey the requisition of the sheriff, and appear with his company, armed and equipped, at such time and place as the sheriff may direct; and must act under his orders, given through the person in command.

His requisition for military to be obeyed and officer acts under his orders.

Persons acting in aid of officers justified.

§ 3338. When officers of justice are authorized to act in the prevention of offences, other persons, who, by their command, act in their aid, are justified in so doing.

Title 2.

PROCEEDINGS IN CRIMINAL CASES.

CHAP. 1. Proceedings to keep the peace.
" 2. Of the local jurisdiction of indictable offences.
" 3. Of the time of commencing criminal prosecutions.
" 4. The complaint and warrant of arrest, the execution of the same, the examination, discharge or commitment of the defendant.
" 5. The arrest.
" 6. Grand and petit jurors.
" 7. The indictment.
" 8. Of presenting the indictment in court, filing the same, ordering the defendant into custody, the issue and execution of the writ of arrest, giving bail and forfeiture.
" 9. Of witnesses in criminal cases.
" 10. Of the arraignment and proceedings preliminary to the trial, and of the trial.
" 11. General provisions.
" 12. Appeals and writs of error in criminal cases.
" 13. Bail in criminal cases.
" 14. Forfeitures against jurors, witnesses and bail.
" 15. Reprieves, commutations and pardons.
" 16. The writ of habeas corpus and proceedings thereon.

CHAPTER I.

PROCEEDINGS TO KEEP THE PEACE.

SEC.
3339. Duty of magistrates to require security to keep the peace.
3340. Duty upon complaint being made.
3341. If there is reason to fear that person complained of will commit offence on the person or property of another, warrant to issue.
3342. By whom such warrant may be executed.
3343. On being brought before the magistrate he must be heard in his defence.
3344. When the defendant may be discharged, and the complainant to pay the cost.
3345. How such costs is collected.
3346. When the defendant is required to give security, and for what time.
3347. Form of an undertaking to keep the peace.
3348. Upon giving undertaking, defendant to be discharged; if not given to be committed.
SEC.
3349. How discharged, upon commitment.
3350. When defendant is to pay the costs.
3351. Defendant may appeal, and duty of magistrate in relation to.
3352. Form of the undertaking on the appeal.
3353. To whom and when undertaking is to be returned.
3354. Proceedings on the prosecution of the appeal.
3355. Effect of undertaking if appellant fails in his appeal.
3356. When court or magistrate may require security without process.
3357. By the circuit court on conviction for certain offences.
3358. When the undertaking is forfeited.
3359. Any portion of the forfeiture may be remitted.

§ 3339. The judges of the supreme and circuit court, and

the chancellors throughout the state, the judges of probate and justices of the peace in their respective counties, and the mayor or chief officer of any incorporated city or town, within the limits of their respective corporations, are magistrates within the meaning of this and the following titles, and authorized to require persons to give security to keep the peace in the manner provided for in this chapter. What officers may require security.

§ 3340. Whenever complaint is made to a magistrate, that any person has threatened or is about to commit an offence on the person or property of another, he must examine the complainant, and any witness he may produce, on oath, reduce such examination to writing, and cause it to be subscribed by the parties so examined. How to proceed on complaint.

§ 3341. If on such examination it appears that there is reason to fear the commission of any such offence, by the person complained of, the magistrate must issue a warrant, directed to any lawful officer of the state, containing the substance of the complaint, and commanding such officer forthwith to arrest the person complained of, and bring him before him, or some other magistrate, having jurisdiction of the matter. When to issue warrant.

§ 3342. Such warrant may be executed by either of the officers named in section 3385. By what officers executed

§ 3343. When the person complained of is brought before the magistrate, he and his witness must be heard in his defence. Defendant heard in defence.

§ 3344. If on hearing of the witnesses on both sides, it appears that there is no just reason to fear the commission of the offence, the defendant must be discharged; and if the magistrate regard the complaint as unfounded or frivolous, he may order the complainant to pay the costs of prosecution. On hearing testimony may discharge. Costs.

§ 3345. Upon making such order, the complainant is answerable to the magistrate, and the officer executing the warrant for their costs, and an execution may issue to coerce the payment. Execution for costs.

§ 3346. If however there is just reason to fear the commission of such offence, the defendant must be required to give security to keep the peace, in such sum as the magistrate may direct, towards all the people of this state, and particularly towards the person against whom, or whose property there is reason to fear the offence may be committed, for such time as the magistrate directs, not more than twelve and not less than six months; but the defendant must not be required to appear at the next term of the circuit court unless he has actually committed an offence cognizable in such court. When required to give security. When required to appear at court

§ 3347. The undertaking to keep the peace may be in substance as follows:

The State of Alabama, }
County. } We (here insert the names of the defendant, and his securities,) agree to pay the state of Alabama one thousand dollars, (or such sum as the magistrate Form of undertaking.

directs,) if the said (here insert the name of the defendant,) does not keep the peace for twelve months, (or as the case may be,) from this undertaking towards all the citizens of this state, and particularly towards (here insert the name of the person against whom or whose property there is reason to fear the commission of the offence,) dated —— day of ——, 185 .

A. B.
Signed, C. D.
E. F.

Approved.

G. H., justice of the peace, (or as the case may be.)

Undertaking given, must be discharged, and failing to give committed.

§ 3348. Upon such undertaking, with sufficient security being given, the defendant must be discharged; and if not given, the magistrate must commit him to jail until he gives the same; specifying in the warrant of commitment the cause thereof, the time he is required to keep the peace, and towards whom particularly, as also the sum in which security is required.

How discharged after commitment.

§ 3349. Any person committed under the provisions of the preceding section, may be discharged by the sheriff of the county in which he is detained, upon entering into an undertaking to keep the peace with sufficient securities, in the sum and for the term required by the magistrate.

Costs.

§ 3350. In all cases where a person is required to keep the peace, the magistrate may order the costs of the prosecution, or any part thereof, to be paid by such person; and an execution may issue for the collection of the same.

May appeal in certain cases.

§ 3351. Any person required to keep the peace under the provisions of the preceding sections of this chapter, by any other magistrate than a judge of the supreme or circuit court, or chancellor, on entering into an undertaking with security, in a sum equal to that required of him to keep the peace, for the prosecution of his appeal, and in the meantime to keep the peace, is entitled to an appeal to the next circuit court of the county; and the magistrate from whose order the appeal is taken, may require such witnesses, as he thinks necessary, to enter into an undertaking, in the sum of one hundred dollars, to appear at such court.

Witnesses.

Form of undertaking on appeal.

§ 3352. The undertaking on the appeal, under the provisions of the preceding section, may be in substance as follows:

The state of Alabama, }
County. } An order having been made by A. B., a justice of the peace for said county, (or other magistrate, as the case may be,) requiring (here insert the name of the defendant,) to keep the peace towards all the people of this state, and particularly towards (here insert the name of the person against whom, or whose property there is reason to fear the offence may be committed,) from which order the said defendant has taken an appeal to the next circuit court of said county: Now, therefore, we (here insert the names of the defendant and his securities,) agree to pay the state of Alabama (here insert the amount required by the magistrate,)

— dollars if the said defendant fail to prosecute his appeal to effect, and in the meantime to keep the peace towards all the people of said state, and particularly towards (here insert the name of the person against whom, or whose property there is reason to fear the offence may be committed,) dated this —— day of ——, 185 .

Signed, A. B.
C. D.
E. F.

Approved.

L. M., justice of the peace, (or other magistrate as the case may be.)

Undertaking; to whom and when returned.

§ 3353. Any undertaking given under any of the provisions of this chapter, must be returned by the magistrate taking the same, to the clerk of the circuit court of the proper county by the first day of the next court; and failing so to do, he may be attached for contempt.

Proceedings on the appeal.

§ 3354. The court to which an appeal under the provisions of this chapter is prosecuted, must examine the case anew, and may confirm the order of the magistrate, or discharge the appellant; or require him to enter into a new undertaking, with sufficient securities to keep the peace, in such sum and for such term as the court thinks proper; and may make such order in relation to the costs of prosecution as seems just, which may be enforced by execution.

On failure to sustain appeal.

§ 3355. If the appellant fails to sustain his appeal, his undertaking remains in full force and effect, as to any breach thereof, and also stands as security for any costs which are ordered by the court to be paid by the appellant; and execution may issue therefor against all the parties to the same.

When court or magistrate may act without process.

§ 3356. A person who, in the presence of a court, or magistrate, commits, or threatens to commit an offence against the person or property of another, or contends with another with angry words, may be ordered without process to enter into an undertaking to keep the peace for a term not exceeding twelve months; and in case of refusal, be committed as in other cases.

On conviction in circuit court.

§ 3357. The circuit court may also, on the conviction of any person for an offence against the person or property of another, when necessary for the public good, require the defendant to enter into an undertaking with securities to keep the peace, for not exceeding twelve months; and on his failure, may commit him.

Forfeiture of undertaking.

§ 3358. An undertaking to keep the peace is forfeited by the commission by the defendant of any offence, upon the person or property of another; which may be ascertained by a jury, without the conviction of the defendant therefor, in the circuit court, on ten days' notice to the parties against whom the forfeiture is sought.

Remission of forfeiture.

§ 3359. The court, on a forfeiture of an undertaking to keep the peace, may remit any portion of the amount specified therein, according to the circumstances of the case.

CHAPTER II.

OF THE LOCAL JURISDICTION OF INDICTABLE OFFENCES.

SEC.
3360. Who are liable to punishment for offences.
3361. The county in which the offence was committed has jurisdiction.
3362. Of offences commenced without and consummated within the state.
3363. Commenced within and consummated without the state.
3364. Committed in two or more counties.
3365. Committed on or within a quarter of a mile of the county line.
3366. Of indictments for abduction, kidnapping, and bringing a free person into the state to hold as a slave.
3367. Of slave stealing.
3368. Property stolen in another state and brought into this.
3369. Property stolen in one county and brought into another.

What offenders liable to punishment.

§ 3360. Every person, whether an inhabitant of this or any other state or country, is liable to punishment by the laws of this state, for an offence committed therein, except when it is by law cognizable exclusively in the courts of the United States.

Local jurisdiction of offences.

§ 3361. The local jurisdiction of all offences, unless it is otherwise provided by law, is in the county in which the offence was committed.

When commenced without the state.

§ 3362. When the commission of an offence commenced without this state, is consummated within its boundaries, the person committing the offence is liable to punishment therefor in this state, although he was out of the state at the commission of the offence charged, if he consummated it in this state, through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offence was consummated, unless otherwise provided by law.

Commenced within and consummated without.

§ 3363. When the commission of an offence commenced within this state, is consummated without its boundaries, the offender is liable to punishment therefor; and in such case, the jurisdiction is in the county where the offence was commenced.

In different counties.

§ 3364. When an offence is committed partly in one county and partly in another, or the acts or effects thereof constituting or requisite to the consummation of the offence, occur in two or more counties, the jurisdiction is in either county.

On the county line.

§ 3365. When an offence is committed on the boundary of two or more counties, or within a quarter of a mile thereof, the jurisdiction is in either county.

Person carried into different counties.

§ 3366. For the offences specified in sections 3093, 3094, 3095, 3096, 3101, and 3103, the jurisdiction is in the county in which the offence was committed, or into, or out of which the person upon whom the offence was committed may in the commission of the offence have been brought.

Slave stealing, &c.

§ 3367. For the offences specified in sections 3130, the jurisdiction is in the county in which the offence was com-

mitted, or into or out of which the slave may, in the commission of the offence, have been brought, inveigled, or enticed, or into which he may be brought by or through the agency of the defendant, after the commission of the offence.

Stolen property brought into this state.

§ 3368. Where property is stolen in another state or country, and brought into this state, the jurisdiction is in any county into which the property is brought.

In one county and brought into another.

§ 3369. Where property is stolen in one county, and brought into another, the jurisdiction is in either county.

CHAPTER III.

OF THE TIME OF COMMENCING CRIMINAL PROSECUTIONS.

SEC.
3370. No limitation for capital offences.
3371. Certain other offences for which there is no limitation.
3372. Perjury and subornation of perjury, five years.
3373. Other penitentiary offences, three years.
3374. For misdemeanors, one year.
3375. Petty offences, six months.
3376. When a prosecution is commenced within the meaning of this chapter.

Capital offences.

§ 3370. There is no limitation of time, within which the prosecution of offences which may be punished capitally, must be commenced.

Murder in second degree, manslaughter in first degree, arson, forgery, &c., slave stealing, &c.

§ 3371. There is no limitation of time within which the prosecution of murder in the second degree, manslaughter in the first degree, arson, forgery, or any offence expressly by this code punishable as forgery, counterfeiting, grand larceny, or the larceny of a horse, mare, gelding, foal, or filly, ass or mule, or the stealing, inveigling, or enticing away of a slave, must be commenced.

Perjury and subornation of perjury.

§ 3372. In perjury, and subornation of perjury, the prosecution must be commenced within five years next after the commission of the offence.

Other penitentiary offences.

§ 3373. The prosecution of all other offences which are, or may be punished by imprisonment in the penitentiary, must be commenced within three years after the commission of the offence.

Misdemeanors.

§ 3374. The prosecution for misdemeanors must be commenced within one year after the commission of the offence.

Petty offences.

§ 3375. Petty offences must be prosecuted within six months after their commission.

When prosecution commenced.

§ 3376. A prosecution may be commenced, within the meaning of this chapter, by the issue of a warrant or by binding over the offender.

CHAPTER IV.

OF THE COMPLAINT, AND WARRANT OF ARREST; THE EXAMINATION OF THE SAME; THE EXAMINATION AND DISCHARGE, OR COMMITMENT OF THE DEFENDANT, AND PROCEEDINGS AS TO THE WITNESSES.

SEC.
3377. Definition of a "complaint."
3378. For what causes warrant of arrest may issue.
3379. Complainant and witnesses to be examined on oath, reduced to writing, and subscribed.
3380. What the depositions must state.
3381. What must appear, to authorize the issue of the warrant.
3382. Definition and form of a warrant of arrest.
3383. What it must state.
3384. To whom directed.
3385. By whom executed.
3386. Issued by judge of the supreme or circuit court, or chancellor, may be executed in any county in the state.
3387. Where executed, when issued by other magistrates.
3388. Officers may pursue defendant into another county, and proceedings in such case.
3389. In what cases magistrates must not indorse the warrant.
3390. In what cases magistrates not liable for indorsing illegal warrants.
3391. In what cases sheriff or deputy making the arrest may discharge on bail.
3392. In what cases defendant discharged on bail, and how, when arrest not made by sheriff or his deputy.
3393. Rule for fixing the amount of bail when taken under the last two sections.
3394. Warrant and undertaking to be certified by the magistrate, delivered to the arresting officer, and by him returned to the clerk.
3395. When defendant not bailed under the previous sections, must be brought before magistrate issuing the warrant, or some other magistrate of the same county.
3396. Examination may be adjourned, and proceedings thereon.

SEC.
3397. Defendant forfeits his undertaking, by failing to appear at the time to which the examination is continued.
3398. Proceedings when the magistrate continuing the examination fails to attend.
3499. On failure of the defendant to appear, another warrant of arrest may issue.
3400. Magistrate to proceed with the examination as early as practicable.
3401. Defendants' witnesses to be examined.
3402. Examination controlled by the magistrate.
3403. Defendant may appear by counsel, and witnesses kept separate.
3404. Evidence reduced to writing, and signed.
3405. When defendant must be discharged.
3406. When bailed or committed.
3407. Form of commitment.
3408. If defendant committed, the amount of bail must be indorsed on warrant, and sheriff may discharge on receiving bail in that amount. Undertaking returned.
3409. The witness to be bound to appear at court.
3410. Form of the undertaking of state witnesses.
3411. Of defendants' witnesses.
3412. Witnesses may be required to give security in certain cases.
3413. Proceedings when witnesses are minors or married women.
3414. Witnesses failing to enter into undertaking must be committed.
3415. Witness discharged on entering into undertaking, as indorsed.
3416. All undertakings to be returned to court by the magistrate.
3417. Magistrate may asssociate other magistrates with him.

Complaint.

§ 3377. The complaint is an allegation made before a magistrate, that a person has been guilty of a designated indictable offence.

Warrant of arrest; by whom issued.

§ 3378. For the apprehension of persons charged with indictable public offences, magistrates are authorized within

their jurisdiction, to issue warrants of arrest, under the rules and regulations in this chapter prescribed.

Complainant and witnesses examined on oath, &c.

§ 3379. Upon complaint being made to any magistrate, that such offence has been committed, he must examine on oath the complainant, and such witnesses as he may produce, take their depositions in writing, and cause them to be subscribed by the persons making them.

What facts depositions must state.

§ 3380. The depositions must state the facts stated by the complainant, and his witnesses, tending to establish the commission of the offence, and the guilt of the defendant.

If evidence sufficient warrant to issue.

§ 3381. If the magistrate is satisfied therefrom, that the offence complained of has been committed, and there is reasonable ground to believe the defendant is guilty thereof, he must issue a warrant of arrest.

Warrant of arrest.

§ 3382. A warrant of arrest is an order in writing, stating the substance of the complaint, directed to a proper officer, signed by a magistrate, directing the arrest of the defendant, and may be in substance as follows:

The state of Alabama, }
County. } To any lawful officer of the state:

Form of.

Complaint on oath having been made before me, that the offence of (designating or describing it), has been committed, and accusing C. D., thereof.

You are therefore commanded, forthwith to arrest C. D., and bring him before me. Dated —— day of ——, 185–.

Signed E. F.,
Justice of the peace,
(or other magistrate, as the case may be.)

What it must contain.

§ 3383. Such warrant must designate the name of the defendant, or if it is unknown to the magistrate, the defendant may be designated by any name; it must state the offence, either by name, or so that it can be clearly inferred: the county in which it was issued must appear from some part of the warrant, and the warrant be signed by the magistrate with his name and initials of office; or the same must in some way appear from the warrant.

To whom directed.

§ 3384. It should be directed to any lawful officer of the state, but if executed by any officer having authority, it is valid, without regard to its direction.

By whom executed.

§ 3385. It may be executed by any sheriff, or officer acting as sheriff, or his deputy, or constable, or a marshal or policeman of any city or town, acting within their county.

Where executed.

§ 3386. When issued by a judge of the supreme or circuit court, or a chancellor, it may be executed in any county in the state.

The same.

§ 3387. If it is issued by any other magistrate, it must be executed in the county in which it issued, or if the defendant is in another county, it may be executed therein, upon a written direction of a magistrate of such county, indorsed on the warrant, and signed by him, to the following effect: "This warrant may be executed in —— county."

Officer may pursue.

§ 3388. Any officer having authority to execute the warrant, may pursue the defendant into another county, and if he requires aid to arrest him, must obtain the indorsement of a magistrate of such county, on the warrant, and signed by him, to the effect following: "A—— B——, (or as the case may be), is authorized to execute this warant in —— county;" and upon such indorsement being made, such officer may summon persons to assist him, and exercise the same authority as in his own county.

Indorsement by magistrate.

Where indorsement must not be made.

§ 3389. The indorsement of the magistrate, according to the provisions of the last two sections, must not be made, unless satisfied from his own knowledge, or the oral or written statement, on oath, of some credible persons, proving the hand-writing of the magistrate issuing the warrant in the one case, and in the other that the person in pursuit is an officer authorized to make the arrest, in the county in which the warrant issued.

Not liable for making indorsement.

§ 3390. No magistrate having complied with the provisions of the last section, is liable to any indictment or action for making such indorsements, although it afterwards appear that such warrant was illegally issued, or that the person was not authorized to execute the same.

Defendant; when bailed by sheriff or deputy.

§ 3391. When the offence described in the warrant is a misdemeanor, and it is executed by the sheriff or his deputy, such sheriff or deputy may, on the request of the defendant, discharge him on sufficient bail for his appearance at the next term of the court having jurisdiction of the offence, to answer any indictment which may be found against him therefor; and if such court is in session, for his appearance at such court.

When by magistrate.

§ 3392. When the offence described in the warrant is a misdemeanor, and it is not executed by the sheriff or his deputy, at the defendant's request, he may be brought before a magistrate of the county in which the warrant was executed; and such magistrate may, without examination, discharge such defendant, upon sufficient bail for his appearance before the court having cognizance of the offence.

Amount of bail.

§ 3393. When bail is taken under the provisions of the last two sections, the officer or magistrate, in fixing the amount of bail, must act on the presumption that the offence is of an aggravated nature.

Undertaking of bail and warrant to be delivered to clerk.

§ 3394. The magistrate admitting the defendant to bail, under the provisions of section 3392, must certify the same upon the warrant, and deliver such warrant with the undertaking to the officer who executed the warrant; who must cause the same to be delivered, without unnecessary delay, to the clerk of the court in which the defendant is bound by his undertaking to appear.

Arrest for felony, or if not bailed.

§ 3395. When the warrant of arrest is executed in any other county than the one in which it issued, and is for felony; or when for a misdemeanor, and the defendant is not bailed according to the provisions of sections 3391 and 3392,

he must be brought before the magistrate issuing the warrant; or if he is unable to attend, or his office vacant, before some other magistrate of the county in which such warrant issued; and the warrant, with a proper return thereon, must be delivered to such magistrate.

Examination may be contested.

§ 3396. When a defendant is brought before a magistrate for examination on a warrant of arrest, such magistrate may adjourn the examination from time to time, as may be necessary, not exceeding ten days at one time, without the consent of the defendant, and to the same or a different place in the county; and in such case, if he is charged with a capital offence, he must be committed to jail in the meantime; if the offence is not capital, he may give bail in such sum as the magistrate directs, for his appearance for such further examination, and for the want thereof must be committed; and on the day to which the examination was adjourned, he may be brought before the magistrate by his verbal order to the same officer who had charge of him, or by order in writing to a different person, if the custody has been changed.

Defendant to give bail.

Undertaking forfeited by failing to appear, &c.

§ 3397. If the defendant does not appear before the magistrate at the time to which the examination is adjourned, he must certify the default on the undertaking of bail, and return the same to the next circuit court of his county; and the like proceedings must be had thereon as upon the breach of an undertaking in that court; the certificate of the magistrate being presumptive evidence of the default of the defendant.

Other magistrates may attend.

§ 3398. If the magistrate adjourning the examination, fails to attend on the day to which such examination is adjourned, any other magistrate of the county may attend in his place, and proceed with the examination; or if the defendant fail to appear, enter his default and certify the same with the undertaking of bail to the next circuit court of the county, according to the provisions of the preceding section; and the like proceedings may be had thereon, as if certified by the magistrate taking the same.

Default of defendant to be certified.

On failure to appear another warrant to issue.

§ 3399. On the failure to appear, the magistrate certifying the default, or any other magistrate, may issue another warrant of arrest, upon which the same proceedings may be had against the defendant, as on the original warrant.

Examination made without delay.

§ 3400. The magistrate before whom any person is brought, charged with an indictable offence, must, as soon as may be, examine the complainant, and the witnesses for the prosecution on oath, in the presence of the defendant.

Witnesses for defendant.

§ 3401. After the testimony for the prosecution is heard, the witnesses for the defendant must be sworn and examined.

Examination controlled by magistrate.

§ 3402. The examination, as to the examination of witnesses and rebutting testimony, is under the control of the magistrate, and should be conducted so as to elicit the facts of the case.

Defendant entitled to counsel.

§ 3403. The defendant may appear by counsel, and the magistrate may, on application, direct the witnesses for the

Witnesses may be separated.

prosecution or defence, or both, to be kept separate, so that they cannot hear the evidence, or converse with each other until examined.

Evidence reduced to writing.

§ 3404. The evidence of the witnesses examined, must be reduced to writing by the magistrate, or under his direction, and signed by the witnesses respectively.

When defendant must be discharged.

§ 3405. Upon the whole evidence, if it appear to the magistrate that no offence has been committed, or that there is no probable cause for charging the defendant therewith, he must be discharged.

When bailed or committed

§ 3406. If it appear that an offence has been committed, and there is probable cause to believe the defendant is guilty thereof, if the offence is bailable, and the defendant gives sufficient bail, he must be discharged; but if sufficient bail is not given, or the offence is not bailable, he must be committed to jail by an order in writing.

§ 3407. The commitment may be in substance as follows:

Form of commitment.

The state of Alabama, }
County. } To the jailor of —— county: On the examination of A. B., charged with the offence of murder, (or other offence, as the case may be, describing it by name, or so that it may be clearly inferred,) it appearing that such offence has been committed, and that there is sufficient cause to believe that A. B. is guilty thereof: You are, therefore, commanded to receive him into your custody, and detain him until he is legally discharged. Dated — day of ——, 185 .

C. D., justice of the peace, (or other officer, as the case may be.)

Amount of bail to be indorsed on commitment.

§ 3408. Whenever a person is committed to jail for a bailable offence, under the provisions of this chapter, the magistrate must indorse on the commitment the amount of bail required, and sign his name thereto; and the sheriff of the county to which he is committed, may discharge him on giving sufficient bail in the amount so indorsed; and must return the undertaking to the court to which such person is bound to appear, within five days thereafter.

On giving bail defendant discharged.

Witness to be bound over to court.

§ 3409. The magistrate must also require the witnesses for the prosecution, to enter into an undertaking in the sum of one hundred dollars each, to appear and testify at the court having cognizance of the offence; and if requested by the defendant, may require his witnesses to enter into such undertaking.

Form of undertaking of state witnesses.

§ 3410. The undertaking of the witnesses for the prosecution, may be in substance as follows:

The state of Alabama, }
County. } We, A. B., C. D., and E. F., witnesses against G. H., charged with a public offence, do each agree to appear at the next circuit court of —— county, to give evidence against him; and failing so to do, to pay to

the state of Alabama one hundred dollars. Dated — day of ——, 1850

A. B.
Signed, C. D.
E. F.

Taken by L. M., justice of the peace, (or as the case may be.)

Of defendant's witnesses.

§ 3411. The undertaking of the defendant's witness is in a similar form, but payable to the defendant instead of the state of Alabama.

Witnesses may be required to give security

§ 3412. Whenever the magistrate has good reason to believe that a witness for the prosecution will not appear to testify, he may order such witness to enter into an undertaking to appear and testify, in a larger sum, and with sufficient securities; but security must not be required from any witness who does not reside in the state, and within fifty miles of the place where the examination takes place.

Exception.

Married women and minors.

§ 3413. Married women and minors, being material witnesses for the prosecution, may also be required, in the discretion of the magistrate, to procure securities who will undertake for their appearance to testify.

On failure to enter into undertaking witness committed.

§ 3414. Any witness required to enter into an undertaking, with or without security, must, on failure or refusal, be committed to jail.

How witness discharged.

§ 3415. In such case the magistrate must state, in the commitment, the amount of the undertaking, and whether security is required; and the witness must be discharged by the sheriff, on entering into the undertaking as required.

All examinations and undertakings returned to court.

§ 3416. All examinations and undertakings, by parties or witnesses, taken under this chapter, must be returned by the magistrate to the court at which the defendant or witness is bound to appear, by the first day thereof; and any magistrate failing so to do, may be compelled by rule of court, and in case of disobedience, by attachment for contempt.

How return compelled.

Magistrate may associate other magistrates with him.

§ 3417. Any magistrate to whom complaint is made, or before whom any defendant is brought, charged with a public offence, may associate with himself one or more magistrates of equal grade, and the powers and duties in this chapter prescribed may be executed and performed by them.

CHAPTER V.

OF THE ARREST.

SEC.	
3418.	By whom arrests may be made.
3419.	All persons must aid officers if required.
3420.	Who are officers within the meaning of this chapter.
3421.	Arrest by officers by warrant for indictable offences, when made.
3422.	By private person for felony, when made.
3423.	Officer acting under warrant must inform defendant of his authority, and show the warrant.
3424.	May, if acting under a warrant, break a door or window, if,

SEC.
after notice, admittance is refused.
3425. In what cases officers may arrest without a warrant.
3426. May break door or window, if, after notice, he is refused admittance.
3427. If he has reasonable cause to believe a person has committed a felony, he may arrest him on any day, and at any time.
3428. Duty of officer on making arrest, or when person arrested is de-delivered to him.
3429. When a public offence is committed in the presence of a magistrate, may direct any person to arrest.
SEC.
3430. In what cases a private person may arrest.
3431. Must inform the person of the cause.
3432. When a private person may break a door or window to make an arrest.
3433. Must take person arrested before a magistrate, or deliver him to an officer.
3434. If person arrested escapes, he may be pursued and retaken.
3435. In case of escape or rescue, he may break door or window, after notice and refusal of admittance.

By whom made.

§ 3418. Arrests may be made:

1. By an officer under a warrant.
2. By an officer without a warrant.
3. By a private person.

All persons must aid officer.

§ 3419. Every person must aid an officer in making an arrest, if the officer requires his aid.

Who are officers.

§ 3420. Officers within the meaning of this chapter, are the sheriff, or any officer acting as sheriff, or their deputies, constable, or marshal, or policeman of any city or town, acting within their county.

For indictable offences; when made.

§ 3421. Arrests by officers by warrant, for indictable offences, may be made on any day and at any time.

By private persons for felony.

§ 3422. Arrests by private persons for felony, may also be made on any day, and at any time.

Officer must state his authority and show warrant.

§ 3423. The officer making the arrest under a warrant, must inform the defendant of his authority, and must show the warrant if required.

When an officer may break a door or window.

§ 3424. An officer may break an outer or inner door or window of a dwelling house, to make an arrest on a warrant, if, after notice of his authority and purpose, he is refused admittance.

Arrest by officer without warrant.

§ 3425. An officer may, without a warrant, arrest a person:

1. For an indictable offence committed, or a breach of the peace threatened, in his presence.

2. Where the person has committed a felony, though not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon reasonable cause, of the commission of a felony by the party arrested.

Door or window may be broke.

§ 3426. To make an arrest, as provided for in the preceding section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he is refused admittance.

May arrest on suspicion of felony.

§ 3427. He may also, on any day or at any time, arrest any person whom he has reasonable cause for believing to

have committed a felony; and is justified therefor, though it afterwards appear that a felony has not been committed.

Duty when arresting without warrant.

§ 3428. When arresting a person without a warrant, the officer must inform him of his authority and cause of arrest, except when he is in the actual commission of a public offence, or arrested on pursuit. He may take before a magistrate any one arrested by a private person and delivered to him.

Offence committed in presence of a magistrate.

§ 3429. When a public offence is committed in the presence of a magistrate, he may, by verbal or written order, command any person to arrest the offender, and may thereupon proceed as if he had been brought before him on a warrant of arrest.

Arrests by private persons.

§ 3430. A private person may arrest another:

1. For an indictable offence committed in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been committed, and he has reasonable grounds to believe that the person arrested committed it.

Duty when making the arrest.

§ 3431. He must, at the time of the arrest, inform the person to be arrested of the cause thereof, except when he is in the actual commission of the offence, or when arrested on pursuit.

When private person may break door, &c.

§ 3432. If the person to be arrested has committed a felony, and a private person, after notice of his intention to make the arrest, is refused admittance, he may break open an outer or inner door or window of a dwelling house, to make the arrest.

Person arrested taken before magistrate.

§ 3433. A private person who has arrested another for the commission of an indictable offence, must, without unnecessary delay, take him before a magistrate, or deliver him to an officer.

On escape or rescue may be pursued.

§ 3434. If a person arrested escape, or be rescued, the person or officer from whose custody he escaped or was rescued, may immediately pursue and take him, at any time and in any place in the state.

To retake on pursuit or rescue, may break door, &c.

§ 3435. To retake the person escaping or rescued, the person may, after notice of his intention, and refusal of admittance, break open an outer or inner door or window of a dwelling house.

CHAPTER VI.

OF GRAND AND PETIT JURORS.

ARTICLE 1. Of the formation of the grand and petit jury.
" 2. Of the powers and duties of the grand jury.

ARTICLE I.

Of the formation of the grand and petit jury, and their compensation.

SEC.
3436. Names of persons competent to be selected from the householders and freeholders of the county, at what time, by what officers, &c.
3437. A majority of officers may act.
3438. None but fit persons to be selected.
3439. What persons must not be selected.
3440. What persons are exempt.
3441. List of persons selected, their names, residence and occupation and filed in office of judge of probate.
3442. Proceedings in relation to drawing jurors.
3443. Names of persons to serve as grand jurors, drawn and the number.
3444. Number of petit jurors drawn.
3445. Number of petit jurors for special court for unfinished business.
3446. For special court for trial of capital and other felonies.
3447. Drawing, how conducted.
3448. Names to be deposited in separate box, and not to serve until all the names in the first box have been drawn.
3449. List of grand jurors to be delivered to clerk of circuit court.
3450. Of petit jurors and for what week drawn delivered to such clerk.
3451. Clerk to issue order to sheriff to summon grand jurors.
3452. The same as to petit jurors, specifying the week they are to serve.
3453. What the order must contain, and how persons are summoned
3454. Order must be returned by the meeting of court.
3455. Fine on jurors failing to attend.
3456. Excuses may be rendered at the same or a subsequent term.
3457. If fine imposed notice to issue to juror.
3458. Must be executed and how.
3459. When judgment for fine made absolute.
SEC.
3460. In what cases the court may discharge jurors.
3461. The name of juror failing to attend, or excused must be returned to the box, or in certain cases destroyed.
3462. Number of persons to form grand jury.
3463. The court appoints the foreman.
3464. How deficiency in grand jury supplied.
3465. Sheriff to summon tales jurors, who are fined on failure to attend.
3466. Larger number attending, names to be drawn.
3467. Oath to the foreman of the grand jury.
3468. Oath to the other grand jurors.
3469. Proceedings when offence is committed during court, and after the discharge of the grand jury.
3470. The provisions in relation to selecting, drawing and summoning jurors directory.
3471. Court to ascertain if grand juror is qualified.
3472. Jury not duly drawn, &c., officers may be fined.
3473. When no grand or petit jury summoned.
3474. Petit jurors how disposed, for transaction of business.
3475. Deficiency in petit jury to be supplied, and jury may be formed of by-standers.
3476. Definition of "talesman" and his duties.
3477. Fine on talesman failing to attend or withdrawing.
3478. Oath of petit jurors.
3479. Jury bonds, how secured and by whom kept.
3480. Drawing jury unfairly; penalty.
3481. Pay of jurors.
3482. Pay of tales jurors.
3483. To be paid out of county treasury on certificate of the clerk.
3484. Jury certificates receivable for county dues.

How selected

§ 3436. The sheriffs of the several counties in this state, must obtain, biennially, a list of the householders and freeholders residing in their respective counties; and the sheriff, judge of the probate court, and clerk of the circuit court, must, on the first Monday in May, one thousand eight hundred and fifty-three, or within thirty days therefrom, and biennially thereafter, meet at the office of the clerk of the circuit court, and select from such list the names of such persons as may be thought competent to discharge the duties of grand and petit jurors with honesty, impartiality and intelligence.

Majority may act.

§ 3437. A majority of the officers designated in the preceding section, may discharge the duties in this chapter required, such duties being official, and their oaths of office pledged for their faithful performance of the same.

To select none but fit persons.

§ 3438. In making the selection, such persons only as they know, or have good reason to believe possess the qualifications specified in section 3436, and are esteemed in the community for their integrity, fair character and sound judgment, must be selected.

What persons must not be selected.

§ 3439. No person under the age of twenty-one, or above the age of sixty years; no person afflicted with a permanent disease; no habitual drunkard or person who cannot read and write, must be selected as a fit person to serve as juror.

Persons exempt from jury duty.

§ 3440. The professors and students of universities and colleges; attorneys at law during the time they practice their profession; judges of the several courts; ministers in charge of churches; practicing physicians; teachers and students of academies and common schools; keepers of public mills; county commissioners; members of incorporated fire companies; officers of the United States; secretary of state and officers of the executive department of the government; sheriffs and their deputies; clerks of courts and coroners; the president and directors of incorporated banks; keepers of ferries, toll bridges and toll gates; the officers of any rail, plank or other road, constructed under the authority of this state, whose duties would materially interfere with serving on juries; the officers and crew of any steam boat, navigating the waters of this state; and all mail contractors, mail agents and public stage drivers, are exempt from serving on juries, unless by their own consent.

List of persons selected filed with judge of probate.

§ 3441. The selection of householders and freeholders, made in conformity with the provisions of this chapter, must be drawn off in a fair hand, setting forth the christian and surname of such persons; their respective places of residence and their occupation if known; which list must be filed in office of the judge of probate, within ten days after such selection is made.

Proceedings preliminary to drawing jurors.

§ 3442. On receiving such list, the judge of probate must write the names of the persons contained therein, with their respective places of residence, and their occupation, if it appears from such list, on separate pieces of paper; and must

roll up or fold such pieces of paper in the same manner, as near as may be, so that the name written thereon is not visible, and then deposit the same in a box, from which they must be drawn as hereinafter provided.

Grand jurors to be drawn, and when.

§ 3443. At least twenty days before the day fixed by law for holding the regular term of the circuit court, in each county, eighteen names must be drawn from such box to serve as grand jurors at such court; and as many for petit jurors as are required by the following section.

Petit jurors; number.

§ 3444. There must be drawn for each week allowed by law for the regular term of the circuit court, thirty persons; and if the term of such court is unlimited, thirty persons for each week, for so many weeks as the clerk thereof is of opinion a jury will be required.

Special courts for unfinished business.

§ 3445. In case of a special court for the trial of unfinished business, twenty days before the time fixed for holding of such court the names of thirty persons for each week of such court, must be drawn from such box.

For trial of capital felonies.

Other felonies.

§ 3446. In case a special court for the trial of a person charged with a felony, if the offence is one which may be punished capitally, ten days before the day fixed for the holding of such court, fifty, and for any other offence twenty-four names, must be drawn from such box to serve as jurors at such special term.

Jurors; how drawn.

§ 3447. The drawing of grand and petit jurors must be conducted as follows:

1. The judge of probate, sheriff and clerk of the circuit court, or a majority of such officers, must be present.

2. One of such officers must shake the box containing the names of the persons selected to serve as jurors, so as to mix the slips on which their names are written, as much as possible.

3. One of such officers must then, in the presence of the others, publicly draw out of such box, if the drawing is for a regular term, eighteen of the names for the grand jury, and as many for the petit jury as the law requires; and if for a special term, as many names as may be required for the petit jury.

4. A minute of the drawing must be kept by one of such officers, and as each name is drawn, it must be entered before any other name is drawn.

5. If after the drawing of the whole number required, the name of any person is drawn who is known to be dead, or who has become insane, has permanently removed from the county, or is otherwise disqualified, an entry of such disqualification must be made on the minutes of the drawing, and the slip on which is written the name of such person must be destroyed.

6. Another name must then be drawn in the place of that destroyed, which must in like manner be entered on the minutes of the drawing, and the same proceedings had as often as may be necessary, until the whole number is drawn.

7. The minutes of the drawing must be signed by the officers in attendance, and filed in the office of the judge of probate.

Persons drawn not to serve until whole list drawn.

§ 3448. The slips drawn from the box must be placed in another box, and the persons whose names are thereon written must not be required to serve as grand or petit jurors until the names contained in the first box have been drawn, or until from the householders and freeholders residing in the county, a list of names qualified to serve as jurors is made out anew; but the names drawn must not be placed in such other box until after the adjournment of the circuit court, when the judge of probate must ascertain from the clerk of such court which of the persons drawn were excused for a cause of a temporary character, or who failed to attend, or whose services were entirely dispensed with by reason of the failure, or adjournment of the court, in order that he may dispose of such names according to the provisions of section 3461.

List of grand jury, &c., delivered to clerk.

§ 3349. A list of the persons drawn to serve as grand jurors, with their place of residence and occupation, if known, must be made out by the judge of probate, be signed by him and delivered to the clerk of the circuit court.

Petit jurors.

§ 3450. A similar list must be made out by the judge of probate, of the persons drawn to serve as petit jurors, and for what week of the court such persons were drawn, signed by him and delivered to the clerk of the circuit court.

Clerk to issue venire for grand jury.

§ 3451. Upon the receipt of such list, the clerk of the circuit court must issue an order to the sheriff of his county, commanding him to summons the persons named in the list of persons to serve as grand jurors, with which he has been furnished by the judge of probate, to appear at the next circuit court of such county, and serve as grand jurors.

Same for petit jury

§ 3452. He must also issue a similar order to the sheriff to summons the persons named in the list furnished him by the judge of probate, of the persons to serve as petit jurors, the order specifying the particular week such persons are to serve.

What the venire or order must contain

§ 3453. The order issued under the provisions of the last two sections, should recite at length the names, place of residence and occupation of the several persons named therein, and may be executed by the sheriff or the officer acting in his place, by giving personal notice to each person, or by leaving a written notice at the place of his residence, with some member of his family or white person residing in the same house, three days before court.

How served.

Returned.

§ 3454. Such order, with the proper return thereon, must be returned to the clerk of the court from which it issued, by the meeting of such court.

Penalty on persons failing to attend

§ 3455. The court to which such writ is returned, must impose a fine, of not less than fifty or more than one hundred dollars, on any person duly summoned as a grand or petit juror, who fails to attend, to be recovered by the state for the

use of the county, unless he appear and render a good excuse for his non-attendance.

Excuses may be rendered.

§ 3456. A juror may render his excuse at the same term at which such judgment was rendered, or at any term thereafter, before the judgment is made absolute; and if the excuse is sufficient, must be discharged from the fine and costs; and in no case must a judgment against a juror be made absolute, unless he appears, or the notice provided for in the next section has been personally served on him.

Notice of conditional judgment.

§ 3457. If a person on whom a fine is imposed under the provisions of section 3455, fails to appear at the court at which the fine is imposed, the clerk must issue a notice to such person, of the conditional judgment which has been rendered against him, and that such judgment will be made absolute unless he appear and show a good excuse for his default at the next term.

How executed and renewed.

§ 3458. Such notice must be executed by serving the defaulter with a copy thereof; and on a failure to execute the same to the next court, it may be renewed to the next succeeding court, and so on until the same is executed.

When judgment made final.

§ 3459. On such notice being returned, executed by the sheriff, if the defaulter fail to appear, or to render a good excuse for his default, the judgment must be made absolute.

When juror may be discharged.

§ 3460. The court may discharge a grand or petit juror from serving as such, who does not possess the requisite qualifications, or who is exempt or disqualified for such service, or for any reasonable or proper cause, to be judged of by the court.

Names of jurors not attending or excused put back into the jury box.

§ 3461. When any person drawn as a grand or petit juror, does not attend the court for which he was drawn, or is excused for the term, his name must be returned to the box of undrawn ballots, and the clerk of the circuit court must furnish the judge of probate with a list of the names of all persons thus failing to attend, or excused; but when any person drawn is discharged by the court, or excused on account of any disqualification, or other cause of a permanent nature, the slip on which the name is written must be destroyed.

Number of grand jury.

§ 3462. There must not be less than fifteen persons sworn on any grand jury.

Foreman; how appointed.

§ 3463. The court appoints the foreman of the grand jury, and if he is discharged, or excused after the jury is sworn, or charged, his place may be supplied by the court.

Deficiency in grand jury; how supplied.

§ 3464. If fifteen persons duly qualified to serve as grand jurors do not appear, or if such number is reduced below that number, by any one who is summoned being discharged, excused, or by any other cause, the court must, by an order to be entered on its minutes, direct the sheriff to summon twice the number of persons required to complete the grand jury, from the citizens of the county qualified to serve.

Persons to be summoned.

§ 3465. The sheriff must summons such persons who are bound to attend forthwith, and serve, if drawn according to the provisions of the following section, as grand jurors, un-

less excused by the court in the same manner, and subject to the same penalties for a failure to attend and serve, as are in this chapter provided, as in case of persons duly drawn and summoned. Penalty for failing to attend.

§ 3466. If a larger number of such persons attend than is required, their names must be written on slips of paper folded, or rolled up so that the name is not visible, placed in a box or some substitute therefor, and from them a sufficient number of names must be drawn, under the direction of the court, to complete the grand jury. Proceedings when larger number attend than are required.

§ 3467. The following oath must be administered to the foreman of the grand jury: You, as foreman of the grand jury of —— county, do solemnly swear, (or affirm, as the case may be,) that you will diligently inquire, and true presentment make of all indictable offences given you in charge, as well as those otherwise brought to your knowledge, committed, or triable within this county; the state's counsel, your fellows, and your own, you shall keep secret; you shall present no person from envy, hatred or malice; neither will you leave any one unpresented, for fear, affection, reward or the hope thereof; but you shall present all things truly, as they come to your knowledge, to the best of your understanding. Oath of foreman of grand jury.

§ 3468. After the oath is administered to the foreman of the grand jury, the following oath must be administered to the other jurors: "The same oath which your foreman has taken on his part, you and each of you shall, well and truly, observe and keep on your respective parts." Other grand jurors.

§ 3469. If any indictable offence is committed during the session of any circuit court, after the grand jury has been discharged, the court may, in its discretion, by an order to be entered on its minutes, direct the sheriff to summons eighteen persons possessing the requisite qualifications of grand jurors; and the sheriff must, accordingly, forthwith summons the number designated of such persons, who must attend under the same penalties as other persons summoned, and drawn as grand jurors; and from the persons so summoned, attending, or in case of deficiency from persons summoned and drawn, as in other cases, a special grand jury must be empannelled, charged and sworn as in other cases, whose duty it is to investigate such offence, and to proceed thereon as a regular grand jury. Special grand jury.

§ 3470. The provisions of this chapter, in relation to the selecting, drawing and summoning of grand and petit jurors, are directory merely; and such juries selected, drawn and summoned, whether at an earlier or later day, must be deemed legal, and possess the power to perform the duties belonging to grand and petit juries. Provisions as to selecting jurors, &c., directory.

§ 3471. It is the duty of the court to ascertain before the grand jury is charged if they possess the requisite qualifications, and no challenge to the array of a grand jury can be interposed by any person. Court must ascertain if grand jurors are qualified.

Penalty on officers when juries not drawn, &c.

§ 3472. When by the neglect of any of the duties of the judge of probate, sheriff and clerk of the circuit court, the grand or petit juries are not duly drawn and summoned to attend, the court may impose a conditional fine of five hundred dollars on such officers, to be entered and made absolute, as against defaulting jurors.

In case no jury is returned.

§ 3473. If in consequence of the neglect of such officers, or from any other cause, no grand or petit jury is returned to serve at any term of the circuit court, or no petit jury summoned for any week thereof, the court may direct the sheriff to summon eighteen persons qualified to serve as grand jurors, and the requisite number to serve as petit jurors; and such persons failing to attend, are subject to the same penalties as if they had been regularly drawn and summoned, to be recovered in the same manner; and in case of the failure of such persons to attend, the court may supply the deficiency, as in other cases; and a grand or petit jury thus formed is in all respects valid.

Disposition of petit jurors for business.

§ 3474. To dispose of the petit jurors for the transaction of business, the clerk must, on the day on which they are summoned to attend, prepare by lot a list of their names; the first twelve must be sworn, and called the first jury; the next twelve must then be sworn, and called the second jury; and if there are any more petit jurors in attendance, they may be placed on a third jury, or put on either of the other juries, as occasion may require; and the jurors may be transferred from one jury to another, as the convenience of the court or the dispatch of business requires.

Juries may be made up or supplied from by-standers.

§ 3475. When, by reason of challenges, or any other cause, it is rendered necessary, the court may cause petit jurors to be summoned from the by-standers, or the county at large, either to supply the deficiency on juries, or to form one or more entire juries, as the occasion requires.

Talesmen.

§ 3476. A juror summoned to complete a regular jury, or to enable the court to proceed to business, when the regular juries are engaged in the trial of causes, is called a talesman, and must not be compelled to serve longer than the day for

Not to serve but one day.

which he was summoned, unless he is detained until the next day, or longer, in the trial of an issue, or in the execution of a writ of inquiry submitted to the jury of which he is a member, or unless resummoned for such day.

Talesmen failing to attend.

§ 3477. The court may fine any person summoned as a talesman who fails to attend, or who after attending, withdraws, without leave of the court before his term of service expires, twenty dollars; for the recovery of which a conditional judgment is rendered, and the same proceedings had thereon as in the case of regular jurors.

Oaths of petit jury.

§ 3478. The following oath must be administered by the clerk in presence of the court, to each of the petit jurors: "You do solemnly swear, (or affirm, as the case may be,) that you will well and truly try all issues, and execute all writs of inquiry which shall be submitted to you during the

present term, (or week, as the case may be,) and true verdicts render, according to the evidence;" and the same oath must be administered to the tales jurors, substituting the word "day" for "term" or "week." Tales jurors.

§ 3479. The boxes for the safe keeping of the names of the persons selected and drawn as jurors under the provisions of this chapter, must be secured by sufficient locks, kept by the judge of probate, and paid for out of the county treasury. Jury boxes; how secured and kept.

§ 3480. If any person does any act with intent, and calculated to affect the drawing of a jury fairly, according to the provisions of this chapter, he must, on conviction, be fined not less than two hundred or more than one thousand dollars, and may be imprisoned not exceeding six months; and if such person is the judge of probate, sheriff, or clerk of the circuit court, his office is vacated thereby, and the conviction being certified by the clerk or presiding judge of the court, to the appointing power, must be filled as in other cases. Drawing jury unfairly.

§ 3481. Regular jurors, both grand and petit, serving as such, are entitled to receive one dollar and fifty cents for each day's service, five cents a mile in going to and returning from such courts, and ferriages. Pay of.

§ 3482. Tales jurors receive no compensation, unless they serve for more than one day, in which case they receive the same pay for each day's service as the regular jurors, but are allowed no mileage or ferriages. Tales jurors.

§ 3483. The compensation to jurors is paid out of the county treasury, on the certificate of the clerk, stating the number of days he has served, and the mileage and ferriage to which he is entitled, which may be proven by the oath of the juror. Paid by county.

§ 3484. Jurors' certificates are receivable by the tax collectors, clerks, sheriffs, and judges of probate, for all county dues. Certificates receivable for county dues.

ARTICLE II.

Of the powers and duties of the grand jury.

SEC.
3485. Duties of the grand jury.
3486. Entitled to access to jail and county offices.
3487. Discretion as to certain misdemeanors.
3488. Discretion as to other misdemeanors in certain cases.
3489. Bound to disclose all offences.
3490. Duty as to disclosing testimony.
3491. Witnesses before, by whom sworn, &c.
3492. May direct the issue of subpœnas, and duty of foreman when witness fails to attend.
3493. Duties of solicitors in relation to.
3494. What testimony must be received by grand jury.
3495. Proceeding when juror charged with offence.
3496. If in such case the number reduced below thirteen, how deficiency supplied.

§ 3485. It is the duty of the grand jury: Duty of.

1. To make a personal inspection of the condition of the To inspect jail.

jail, in regard to its sufficiency for the safe keeping of prisoners, their accommodation and health, and to inquire into the manner in which the same has been kept since the last term.

County treasury and bonds.

2. To examine into the condition of the county treasury, and the bonds of all county officers, with regard to their correctness and sufficiency, and to report upon the same.

Indictable offences.

3. To inquire into all indictable offences committed or triable in the county, not barred by lapse of time or some other cause, which they are advised by the court would bar such offence.

4. To perform such other duties as are, or may be, by law required of them.

Have access to county offices and records.

§ 3486. They are entitled to free access, at all proper hours, to the office of the county treasury and the county jail, and to the examination, without charge, of all records and other papers in any of the county offices in any way connected with their duties.

Discretion as to indictments.

§ 3487. In cases of affrays and assaults and batteries, where no stick, whip, or weapon is used, and the offence is not an aggravated one, the grand jury are not bound to indict the offender, unless twelve of the jurors think it necessary for the public good.

The same.

§ 3488. In other cases of misdemeanor, in which no prosecutor appears, the grand jury are not bound to find an indictment, unless twelve of the jurors think it necessary for the public good.

Must disclose all offences.

§ 3489. If a member of the grand jury knows, or has reason to believe, that an indictable offence has been committed, which is indictable or triable in the county, he must disclose the same to his fellow jurors, who must thereupon investigate it.

On certain cases to state evidence of witnesses.

§ 3490. A member of the grand jury may be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Witnesses; by whom sworn.

§ 3491. The foreman of the grand jury while in session, or the solicitor, has authority to administer oaths to witnesses appearing before such jury, and the foreman must return to court a list, under his hand, of all the witnesses who have been sworn before the grand jury during the term, and the same must be filed as a record by the clerk.

Subpœnas to issue on application of jury.

§ 3492. The solicitor, or the clerk of the court, on the application of the grand jury, must issue subpœnas for any witnesses the jury may require to give evidence before them, and such witness being subpœnaed, and failing to attend, the subpœna must be returned into court, with the forfeiture indorsed thereon, signed by the foreman, which indorsement is presumptive evidence of the default, and such proceedings

Witness failing to attend.

may thereupon be had as against other defaulting witnesses.

Solicitor to attend grand jury.

§ 3493. The solicitor, when required by the grand jury, for the purpose of examining witnesses in their presence, or of giving legal advice as to any matter connected with their duties, must attend before them; and he can at all times appear before them to give information as to any matter cognizable by them, but must not be present at the expression of their opinions, or the giving of their votes upon any matter before them.

What evidence receivable.

§ 3494. In the investigation of a charge for an indictable offence, the grand jury can receive no other evidence than is given by witnesses before them, or is furnished by legal documentary evidence.

When juror charged with offence.

§ 3495. If any member of the grand jury is charged with an indictable offence, or is a prosecutor, or if the offence was committed against his person or property, or if he is connected by blood or marriage with the person charged, he must not be present at, or take part in the consideration of the charge, or the deliberations of his fellow jurors thereon.

Deficiency of jurors in such cases; how supplied.

§ 3496. If by reason of the provisions of the preceding section, the jurors in the investigation of any matter are reduced below the number of thirteen, by-standers sufficient to make up that number must be sworn and placed on such grand jury, to serve as jurors only during such investigation.

CHAPTER VII.

OF THE INDICTMENT.

SEC.

3497. Definition of indictment.
3498. Distinction between indictments and presentments abolished.
3499. Concurrence of twelve grand jurors required to find a bill; bill indorsed and signed by the foreman.
3500. The name of the prosecutor, or "no prosecutor," indorsed; penalty for failure.
3501. What the indictment must contain.
3502. Form of the indictment.
3503. To correspond with forms in appendix.
3504. Indictments for common law offences.
3505. Certainty as to party charged; exception.
3506. When offences may be included in the same count, or the means charged in the alternative.
3507. Duty of jury when certain that the offence has been committed, but uncertain as to the means, &c., employed.

SEC.

3508. Duty of jury when certain that any of the results charged were produced, but uncertain as to which of them.
3509. When different intents may be alleged in the same count.
3510. When different results may be alleged in the same count.
3511. When the means are unknown to the jury.
3512. How time may be alleged.
3513. When any other fact is unknown.
3514. Not necessary to charge where the offence was committed.
3515. Certainty as to the act or omission.
3516. Presumptions of law, or matters which the court is bound to know need not be stated.
3517. Words in indictment, how construed.
3518. Statutory words need not be strictly pursued.
3519. Want of form not regarded.
3520. Mode of stating judicial proceedings.

SEC.
3521. When offence relates to personal property of partners or joint owner, how it may be charged.
3522. Intent to injure or defraud, may be stated in general terms.
3523. Where the statute uses special terms, the general term embracing the special term may be used.
3524. What sufficient in indictment for libel.
3525. When the misdescription of the instrument in an indictment for forgery, is immaterial.
3526. Distinction between accessories before the fact and principals, and principals in the first and second degree abolished.
SEC.
3527. Proceedings when indictment is lost or destroyed.
3528. In such case, what entry to be made.
3529. In what cases the indictment may be amended.
3530. Proceedings if defendant refuses to amend.
3531. In such cases, what entry must be made.
3532. When the judgment arrested or indictment quashed, new one may be preferred.
3533. In such case, entry of the facts to be made.
3534. How a public place may in certain cases be charged.

Definition of.

§ 3497. An indictment is an accusation in writing, presented by the grand jury to the circuit court, charging a person with an indictable offence.

Presentments abolished.

§ 3498. The distinction between indictments and presentments is abolished.

Twelve of grand jury must concur.

§ 3499. An indictment cannot be found without the concurrence of at least twelve grand jurors; when so found, it must be indorsed "a true bill," and the indorsement signed by the foreman.

Prosecutor to be indorsed on bill or "no prosecutor."

§ 3500. If a prosecutor appears, the foreman must indorse his name on the indictment; and if no prosecutor appears, he must indorse "no prosecutor" thereon; and if the foreman fails to perform this duty, he is liable for the costs, and

Penalty for failure.

may be taxed therewith, in all cases where the indictment is for a misdemeanor, and the court is of opinion that the prosecution is frivolous or malicious.

What indictment must contain

§ 3501. The indictment must contain:

1. The name of this state, the county, court, and term in which it is preferred.

2. A statement of the facts constituting the offence, in ordinary and concise language, without prolixity or repetition; and in such a manner as to enable a person of common understanding to know what is intended; and in no case are the words "force and arms," or "contrary to the form of the statute," necessary.

Form of.

§ 3502. It may be substantially in the following form:

The state of Alabama, } Circuit Court.
County. } Term, 185 .

The grand jury of said county charge, that A. B., before the finding of this indictment, unlawfully, and with malice aforethought, killed C. D., by blows inflicted with an axe, or some other instrument of the like kind, against the peace and dignity of the state.

M. A. B., Sol. of the —— circuit.

The same.

§ 3503. The manner of stating the act, constituting the offence, as set forth in the forms given in the appendix, is suffi-

cient in all cases where the forms there given are applicable. In other cases, forms may be used as nearly similar as the nature of the case and the rules prescribed in this chapter will permit.

Offences at common law.

§ 3504. All indictments for offences designated in this code, which are offences at the common law, are good, if the offence is charged or described according to the common law; and the defendant, on conviction, must receive the punishment prescribed by this code.

Certainty to party. Exception.

§ 3505. The indictment must be certain, as to the party charged; but when his name is unknown to the jury, it may be so alleged without any further identification.

When offences may be charged in the same count. Different means charged.

§ 3506. When the offences are of the same character, and subject to the same punishment, the defendant may be charged with the commission of either in the same count, in the alternative. Where the offence may be committed by different means, the means may be alleged in the same count, in the alternative.

Jury in certain cases to convict.

§ 3507. Where the intent with which, the mode in, or the means by which, an act is done, are essential to the commission of the offence, and such offence may be committed with different intents, in different modes, or by different means, if the jury are satisfied that the act was committed with one of the intents, in one of the modes, or by either of the means charged, it is sufficient; and they must convict, although uncertain as to which of the intents charged existed, or in which mode, or by which of the means charged, such act was committed.

The same.

§ 3508. Where an act done may be attended by more results than one, either of which is sufficient to constitute the offence, the jury must convict, if satisfied that any one of the results charged were produced by the act, although uncertain as to which.

Different intents.

§ 3509. When the same offence may be committed with different intents, the intents may be alleged in the alternative, in the same count.

Different results.

§ 3510. Where an act is criminal, if producing different results, such results may be charged in the same count, in the alternative.

When means are unknown

§ 3511. When the means by which the offence was committed do not enter into the essence of the offence, and the same are unknown to the jury, it may be so alleged.

Time; how charged.

§ 3512. The precise time at which the offence was committed, need not be stated in the indictment; but it may be alleged to have been committed on any day before the finding thereof, or generally before the finding of the indictment, unless the time is a material ingredient in the offence.

Facts unknown.

§ 3513. Any other fact which is unknown to the jury, and is not a material ingredient in the offence, may be so charged in the indictment.

Need not charge where of-

§ 3514. It is not necessary for the indictment to allege where the offence was committed, but the proof must show

fence was committed.

it to have been within the jurisdiction of the county in which the indictment is preferred.

Degree of certainty as to act or omission.

§ 3515. The act or omission charged as the offence, must be stated with that degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Presumptions of law, &c.

§ 3516. Neither presumptions of law, or matters of which judicial notice is taken, need be stated in the indictment.

Words; how construed.

§ 3517. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which must be construed according to their legal meaning.

Words in statute need not be pursued.

§ 3518. Words used in a statute to define an offence, need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Form not regarded.

§ 3519. No indictment is insufficient, nor can the trial, judgment, or any other proceeding thereon be affected, by reason of a defect or imperfection in a matter of form, which does not lead to the prejudice of the substantial rights of the defendant on the merits.

Judicial proceedings; how stated.

§ 3520. In pleading a judgment, or other determination of or proceeding before a court or officer, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting the jurisdiction must, however, be proved on the trial.

Property belonging to partners, &c.; how stated.

§ 3521. When an offence has been committed upon or in relation to any personal property belonging to several partners or owners, it is sufficient to charge such property as belonging to one or more of such partners or owners.

Intent to injure or defraud.

§ 3522. In indictments, when an intent to injure or defraud is required to constitute the offence, it is sufficient to allege an intent to injure or defraud generally, without naming the particular person, state, government, or body corporate, intended to be defrauded.

Special terms of statute.

§ 3523. When a statute creating or defining an offence uses special or particular terms, the indictment may use the general term, in common language, embracing the special term.

For libel.

§ 3524. An indictment for a libel need not set forth any intrinsic facts, for the purpose of showing the application to the party libelled, of the defamatory matter on which the indictment is founded, but is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Misdescription of instrument in forgery.

§ 3525. When an instrument which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is so alleged in the indictment, the misdescription of the instrument is immaterial.

No accessories before the fact or

§ 3526. The distinction between an accessory before the fact and a principal, and between principals in the first and

second degree, in cases of felony, is abolished; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid or abet in its commission, though not present, must hereafter be indicted, tried, and punished as principals, as in the case of misdemeanors. principals in the second degree. All principals.

§ 3527. When an indictment is lost, mislaid, or destroyed, the court, on satisfactory proof thereof, may direct a new indictment to be preferred at the term at which such proof is made, or at the subsequent term; and in such case, the time between the finding of the first indictment so lost, mislaid, or destroyed, and the day on which the subsequent indictment is found, must be deducted from the time limited for the prosecution of the offence for which the defendant is indicted. Indictments lost or destroyed. Limitations not to run.

§ 3528. In the case provided for by the preceding section, the court must cause an entry of record to be made to the following effect: "The State *vs.* A. B. It appearing to the court in this case that an indictment was preferred against the defendant at the fall term, one thousand eight hundred and fifty-one, (or as the case may be,) and that the indictment is lost, mislaid, or destroyed, it is therefore ordered that a new indictment be preferred against the defendant for such offence. Entry in relation to.

§ 3529. An indictment may be amended by the consent of the defendant: Indictments amended.

1. When any person, property, or any other matter stated in an indictment, is incorrectly described.

2. When the name of the defendant is incorrectly stated.

§ 3530. If the defendant refuses to consent to the amendment, the prosecution may be dismissed as to the count in the indictment to which the variance applies, at any time before the jury retire, and another indictment may be found at the same or at the subsequent term; and the time elapsing between the finding of the first indictment and the subsequent indictment, must be deducted from the time limited for the prosecution of the offence. If defendant refuses to consent. Limitation not to run.

§ 3531. In the case provided for by the preceding section, an entry of record must be made to the effect following: Entry to be made in case of amendment or refusal.

The State *vs.* A. B. In this case it appeared from the evidence that there was a variance between the allegations in the indictment and the proof, in this (set out the variance.) Or it appeared from the evidence that the name of the defendant was (stating it,) and the defendant refusing to allow the indictment to be amended, the prosecution was dismissed before the jury retired, and another indictment ordered to be preferred.

§ 3532. When the judgment is arrested, or the indictment quashed for any defect therein, or for the reason that it was not found by a body constituting a grand jury, that it charged no offence, or for any other cause, the court may order another indictment to be preferred for the offence; or Judgment arrested or quashed, new indictment may be preferred.

Limitations not to run.

if no offence was charged, for the offence intended to be charged; and in such case, the time elapsed between the preferring of the first charge or indictment, and the subsequent indictment, must be deducted from the time limited for the prosecution of the offence last charged.

Entry of record.

§ 3533. In the case provided for in the preceding section, an entry of record must be made, setting forth the facts.

Public place; how charged.

§ 3534. When to constitute the offence the act is required to be done in a public place, and such public place is not more particularly defined, it is sufficient to charge the act to have been done in a public place generally.

CHAPTER VIII.

OF PRESENTING THE INDICTMENT IN COURT, AND FILING THE SAME; ORDERING THE DEFENDANT INTO CUSTODY; THE ISSUE AND EXECUTION OF THE WRIT OF ARREST; GIVING BAIL THEREON, AND FORFEITURE.

SEC.

3535. Indictments, how presented to the court; indorsement of.
3536. No entry to be made on the minutes of the finding of the indictment, except in certain cases.
3537. When indictment must not be inspected, except by judge, clerk, and solicitor.
3538. Fact of indictment being found not to be disclosed.
3539. Disclosure is a misdemeanor.
3540. Indictment not to be dismissed, &c., without leave of the court.
3541. Court may direct defendant into custody without process.
3542. When writ of arrest is to issue.
3543. Form of writ of arrest for felony.
3544. Form of for misdemeanor.
3545. By what officers executed.
3546. When sheriff or deputy may discharge defendant on bail.
3547. Form of undertaking of bail.
3548. Bail may be taken in court.
3549. Form of entry of bail in such case.

SEC.

3550. When defendant committed under writ of arrest, copy to be delivered to jailor.
3551. If committed for misdemeanor may be bailed by sheriff.
3552. How, when, and to whom writs of arrest are to be returned when executed.
3553. How, when, and to whom when not executed.
3554. Undertakings of bail to be returned with writ of arrest.
3555. How returns of writs of arrest, and undertakings of bail are compelled, and penalty for failure.
3556. Certificate of post master evidence.
3557. Clerk to take writs of arrest out of the post office.
3558. A sheriff failing, from want of due diligence to execute a writ of arrest, may be fined.
3559. Any number of writs of arrest may issue, and of forfeiture, without an order.

Presentment of indictments in court.

§ 3535. All indictments must be presented to the court by the foreman of the grand jury, in the presence of at least twelve of such jury including the foreman, must be indorsed "filed," and such indorsement dated and signed by the clerk.

No entry to be made.

§ 3536. No entry of an indictment found must be made upon the minutes of the court at the term at which the same is found, unless the defendant is in actual custody, or has given bail to appear and answer the offence.

Not inspected by any person.

§ 3537. When an indictment is found against any person not in actual custody, or who has not given bail to answer thereto, such indictment must not be inspected by any person, except the judge and clerk of the court, and the solicitor, until the defendant has been arrested.

Indictment not disclosed.

§ 3538. No judge, solicitor, clerk, or other officer of the court, or grand juror, must disclose the fact of any indictment being found, until the defendant has been arrested, or given bail for his appearance to answer thereto.

Penalty for disclosing.

§ 3539. A violation of the preceding section is a misdemeanor, punishable, on conviction, by a fine of not less than two hundred dollars; but the provisions of such section do not apply to any disclosures by the issue of process.

Not quashed, &c., except by leave of court.

§ 3540. An indictment must not be quashed, dismissed, discontinued, or abandoned, without leave of the court.

Defendant directed into custody.

§ 3541. After the indictment is returned into court by the grand jury, the court may direct any defendant present, who has not been arrested, to be taken into custody without process.

Writ of arrest; when issued.

§ 3542. A writ of arrest for each defendant, against whom an indictment has been found, who is not in actual custody, or who has not been bailed, or whose undertaking of bail has been declared forfeited, must be issued by the clerk as soon after the indictment has been filed as may be; or it may be issued by any judge of the circuit court, or the solicitor in term time, or vacation, without an order.

By whom.

Form of for felony.

§ 3543. The writ of arrest, when the indictment is for a felony, is to the effect following:

The State of Alabama, }
County. } To any sheriff of the state: An indictment having been found at the fall term, 1851, (or as the case may be), of the circuit court of —— county, against C. D., for the offence of slave stealing; (or as the case may be, describing the offence, so as to show that it is a felony.) You are therefore commanded forthwith to arrest the said defendant, and commit him to jail, and to return this writ according to law.

Dated this —— day of ——, 185–. Signed, E. F., clerk of the circuit court of — county. (or as the case may be.)

For misdemeanor.

§ 3544. If the offence is for a misdemeanor, the writ is in a similar form, adding after the words "commit him to jail," unless he give bail to answer such indictment; and that you return this writ according to law.

By whom executed.

§ 3545. The writ of arrest may be executed by the sheriff or his deputy, of any county in the state; and such officers have the same powers in relation to the arrest of the defendant, upon the writ of arrest, as are conferred upon officers authorized to execute a warrant of arrest.

Sheriff may take bail.

Amount.

§ 3546. If the offence is a misdemeanor, the sheriff or his deputy, must discharge the defendant, on his giving sufficient bail; but in no case the amount of bail must be less than one hundred dollars.

Form of undertaking.

§ 3547. The undertaking of bail must be in substance as follows:

The State of Alabama, }
County. } We, A. B., C. D., and E. F., agree to pay to the state of Alabama five hundred dollars (or such other sum as the officer prescribes), unless he, the said A. B., appear at the next ("or present," as the case may be) term of the circuit court of —— county, and from term to term thereafter, until discharged by law, to answer an indictment pending in said court against him, for assault and battery, (or other offence, as the case may be.)

A. B.
Signed, C. D.
E. F.

Approved.

G. H., sheriff of Montgomery county, (or as the case may be.)

May be taken in court.

§ 3548. Bail may also be taken in open court, in which case the undertaking is entered of record, in substance as follows:

Form of entry.

§ 3549. In open court came A. B., C. D., and E. F., and agreed to pay the state of Alabama one thousand dollars (or other sum prescribed by the court), if the said A. B. fails to appear at the present term of this court, and from term to term thereafter, until discharged by law, to answer an indictment against him for mayhem, (or as the case may be.)

Jailor to take copy of writ.

§ 3550. When any defendant is committed to jail under a writ of arrest, the sheriff must deliver to the jailor a copy of such writ, or must retain a copy, if acting as jailor, which copy is as good authority for his detention as the original writ.

Bailed after commitment.

§ 3551. After a defendant is committed to jail under a writ of arrest, for a misdemeanor, the sheriff may discharge him, on his giving the bail required.

Writs of arrest; how returned.

§ 3552. The sheriff must return all writs of arrest to the clerk of the court from which they issued, with their return indorsed thereon. If executed, the return must be made within five days after service; but if served out of the county in which the indictment was found, such return may be made by depositing the writ of arrest, within five days after service, in any post office, sealed up, directed to the clerk of such court, at the court house of his county, with the title of the case indorsed on the envelop, and the words "writ of arrest" written against such indorsement.

Return of when not served.

§ 3553, When any writ of arrest is not executed, the return must be made to the clerk of the proper court, by the third day of such court, or before the case is called in its order, and when made by the sheriff of any other county than the one in which the indictment was found, it may be made by mail, as prescribed by the preceding section.

Return of undertaking.

§ 3554. The undertaking of bail must also be returned with each writ of arrest.

§ 3555. Any sheriff failing to comply with the provisions of the three preceding sections, may be compelled to make the return by attachment, and forfeits to the state, for the use of the county, fifty dollars and costs; to be recovered against him and his securities, or any of them, having three days' notice thereof, by motion in the circuit court of the county in which the indictment was found. Penalty.

§ 3556. On the trial of such motion, the certificate of the post master, of the deposit of the writ of arrest, the direction, and indorsement on the envelop, is presumptive evidence of such facts. Evidence.

§ 3557. The clerk of the circuit court must take from the post office all packages directed to him, and indorsed according to the provisions of section 3552, and the county must pay the expence of the same. Enclosures taken from post office.

§ 3558. Any sheriff failing to execute the writ of arrest, from the want of due diligence, to be determined by the court, may be fined not exceeding one hundred dollars, on one day's notice; and if such fine is not paid, may be imprisoned not exceeding two months. Sheriff failing to serve writ of arrest may be fined.

§ 3559. As many writs of arrest may be issued as are necessary, and after any forfeiture is taken, another writ of arrest may issue without an order. As many may issue as necessary.

CHAPTER IX.

OF WITNESSES.

SEC.
3560. Clerk to issue subpœnas for defendant.
3561. Also for the witnesses marked on the indictment, and such others as the solicitor may direct.
3562. Solicitor may issue subpœnas.
3563. Proceedings against defaulting witnesses.
3564. Where the depositions of witnesses may be taken by the defendant.
3565. Effect of subpœnas in indictable cases.
3566. No subpœna must issue unless the defendant is in custody, or has given bail.
SEC.
3567. How subpœnas in state cases are served.
3568. Compensation of witnesses in state cases.
3569. The fees of witnesses paid by defendant, on conviction.
3570. In certain cases must be paid by the county.
3571. Witnesses in state cases are exempt from arrest.
3572. On what day state witnesses must be summoned to attend, when the term is more than one week.
3573. On what day, when the term is one week.

§ 3560. The clerk of the court in which an indictment is filed, must, upon the application of the defendant, issue subpœnas for such witnesses as he requires, as well during the sitting of the court as in vacation. Subpœnas for defendant

§ 3561. He must also issue subpœnas for all witnesses whose names are marked upon the indictment as such, on For state witnesses.

the part of the state, and for such other witnesses as he may be directed by the solicitor.

Solicitor may issue.

§ 3562. The solicitor also has authority to issue subpœnas for witnesses on behalf of the state, to attend before the grand jury, or any court in his circuit.

Defaulting witnesses.

§ 3563. Proceedings against defaulting witnesses, in criminal cases, are the same as in civil cases.

Depositions of witnesses in criminal cases.

§ 3564. When any criminal prosecution has been commenced by indictment, or otherwise, and a witness for the defendant is dangerously ill, he may, on application, and affidavit of such fact, obtain an order from the clerk of the court of the county in which such prosecution was commenced, or indictment pending, or any circuit judge, to examine such witness on interrogatories, serving the solicitor with a copy of such interrogatories, for such time as such judge or clerk may prescribe; but such evidence cannot be used on the trial, without proof of the death of the witness.

Witness to appear from court to court

§ 3565. Subpœnas in indictable cases bind the witness to appear from court to court, until the case is decided; and need not be issued but once, unless a judgment rendered, is reversed by the supreme court; in which case new subpœnas must issue for the state, and for the defendant on his application.

Not to issue until defendant in custody.

§ 3566. No subpœna must be issued unless the defendant is in custody or has given bail to answer to the offence.

Served as in civil cases.

§ 3567. Subpœnas in state cases are served as in civil cases.

Compensation.

§ 3568. All witnesses appearing for the state on a subpœna, either before the grand jury, or on an indictment found, are entitled to the same compensation for their attendance as in civil cases.

How paid.

§ 3569. Such fees for attendance must be paid by the defendant on conviction.

In certain cases by the county.

§ 3570. If the defendant or prosecutor when taxed with the costs, is not able to pay the same, the clerk of the court in which the case is pending must give a certificate of attendance for state witnesses as in civil cases; and such certificates are receivable in payment of debts due to the county, or may be paid by the county treasurer out of any fines or forfeitures which may be collected by such county.

Exempt from arrest.

§ 3571. Witnesses summoned in a state case are exempt from arrest, as in civil cases.

When summoned to attend.

§ 3572. Witnesses in criminal cases, in courts which are limited to one week, must be summoned to attend on Wednesday of such week, and on that day of the court the state docket must be taken up.

If court sits more than one week.

§ 3573. In courts in which the term allowed is more than one week, the witnesses must be summoned to attend on Monday of the second week, on which day the state docket must be taken up.

CHAPTER X.

OF THE ARRAIGNMENT, PROCEEDINGS PRELIMINARY TO THE TRIAL, THE TRIAL AND REMOVAL OF THE SAME.

ARTICLE I.

Of the arraignment, preliminary proceedings and trial.

SEC.
3574. Proceedings in case the defendant refuses to plead.
3575. Proceedings upon the plea of guilty.
3476. In capital cases the accused entitled in certain cases to copy of indictment and list of jurors, and to have counsel assigned.
3577. Not entitled to list of jurors summoned in certain cases.
3578. Numbers of persons to be summoned as jurors in capital cases.
3579. Penalty for failing to attend.
3580. Jurors, how made up in capital cases.
3581. Number of peremptory challenges to which the defendant is entitled.
3582. Number of peremptory challenges to which the state is entitled.
3583. The grounds for challenges for cause by either party.
3584. How such grounds are proved.
3585. Other causes for challenges in felonies and how proved.
3586. Certain other causes of challenge.
3587. The court may excuse any unfit person.
3588. An alien is not entitled to a jury of part aliens.
3589. Pleas in abatement to be sworn to except in certain cases.
3490. Pleas to be determined by their substance.
3691. Of pleas to the organization of the grand jury.
3592. No objection can be taken to special grand juries.
SEC.
3593. Defendants may be tried together or separately, at the discretion of the court.
3594. Cases in which a defendant may be a witness for a co-defendant.
3595. Court may discharge a defendant, that he may become a witness for the state.
3596. Slaves are witnesses on trial of free persons of color.
3597. What proof sufficient on trial for rape and offences against nature.
3598. What proof will sustain an allegation of intent to injure, &c.
3599. Competency of witnesses to whom fine goes, or entitled to reward, or injured or defrauded.
3600. When a conviction may be had upon the evidence of an accomplice.
3601. Defendant may be found guilty of the lesser offence.
3602. The duty of jurors having knowledge of a fact in controversy on trial, or after retirement.
3603. Jury discharged in case of sickness of one of their body.
3604. Adjournment of court discharges the jury.
3605. When the jury cannot agree as to all the defendants, a verdict may be rendered as to such as they agree.
3606. Jury may be polled by either party.
3607. A person may be discharged if sick.

§ 3574. If a defendant on his arraignment, refuses or neglects to plead, or stands mute, the court must cause the plea of not guilty to be entered. Refusal to plead.

§ 3575. If he pleads guilty, the court must cause the punishment, if fixed by a jury, to be determined by them; and may in all cases in which a plea of guilty is entered, cause witnesses to be examined to ascertain the character of the offence. Plea of guilty

§ 3576. Every person indicted for a capital offence, if he is in actual confinement, must have a copy of the indictment and Defendant entitled to copy of in-

Indictment and list of jurors in certain cases.

a list of the jurors summoned for his trial, including the regular jury, delivered to him at least two entire days before the day appointed for his trial; and if unable to employ counsel, must have counsel, not exceeding two, appointed by the court, which counsel must be allowed access to the defendant at all reasonable hours; and if the defendant is not in actual custody and have counsel, whose names are so entered on the docket, such counsel must, on application, be furnished with a copy of the indictment and list of jurors.

Counsel assigned.

If pannel exhausted.

§ 3577. If the pannel is exhausted by challenges, or the persons summoned as jurors fail to appear, neither the defendant or his counsel are entitled to a list of the persons summoned to supply their places.

In capital cases number of persons summoned.

§ 3578. For the trial of a person, or persons tried together, charged with a capital offence, the court must make an order directing the sheriff to summon not less than fifty or more than one hundred persons, including those summoned on the regular juries for the week or term, if such term does not exceed one week.

Failing to attend.

§ 3579. Every person summoned as a juror, by order of court, for the trial of a person charged with a capital offence, failing to attend or refusing to serve, must be fined not less than fifty dollars, which may be reduced by the court if the circumstances justify a reduction; such fine to be collected and applied in the same manner as fines imposed on jurors in other cases.

Jurors; how drawn.

§ 3580. On the trial of a person charged with a capital offence, the names of the jurors summoned for his trial, as well as the names of the regular jurors in attendance, must be written on slips of paper, folded or rolled up, placed in a box or some substitute therefor, and shaken together; and such officer as may be designated by the court, must, in its presence, draw out such slips, one by one, until the jury is completed; if all such slips are drawn, and the jury is not made up, the court must direct the sheriff to summon at least twice the number of jurors required to complete the jury, whose names are also to be written on slips of paper, deposited and drawn as herein prescribed, and if such number is exhausted, the same proceedings must be had until the jury is complete.

Deficiency; how supplied

Defendant's challenges.

§ 3581. Upon the trial of a capital offence, the defendant is entitled to twenty-one peremptory challenges; for offences which may be punished by imprisonment in the penitentiary, to fifteen peremptory challenges; and on a trial for any other offence, six.

On the part of the state.

§ 3582. The state is entitled, on the trial of a capital offence, to fourteen peremptory challenges, ten on a trial for an offence which may be punished by imprisonment in the penitentiary, and four on a trial for any other offence.

Grounds of challenge.

§ 3583. The following are good grounds of challenge for either party, on the trial of a criminal offence:

1. That the person has not been a resident householder

or free holder of the county, for one year preceding the time he is sworn.

2. That he is not a citizen of the United States.

3. That he has been indicted within the last twelve months for an offence of the same character as that with which the defendant is charged.

4. That he is connected, by consanguinity or affinity, to either the accused, the prosecutor, or the person alleged to be injured, within the ninth degree, computing according to the rules of the civil law; or by affinity to either of said persons within the fifth degree.

5. A conviction for felony.

6. If, when sworn, he has a fixed opinion as to the guilt or innocence of the defendant, which would bias his verdict.

7. If he has any interest in the conviction or acquittal of, or has made any promise, or given any assurance that he will convict or acquit the defendant.

How proved.

§ 3584. The first four causes of challenge, in the preceding section specified, may be proven by the person summoned, or other evidence; the fifth and seventh, by other testimony only; and the sixth, alone by the oath of such person.

Other grounds.

§ 3585. In all trials for a capital or penitentiary offence, it is a good challenge for cause by the state, that the juror has a fixed opinion against capital or penitentiary punishments; or that a conviction should not be had on circumstantial testimony, which may be ascertained by the oath of the juror or other evidence.

Idem.

§ 3586. Being a witness for the other party; being under the age of twenty-one, or over the age of seventy years, or of unsound mind; are also good causes of challenge, and may be proved as the court may direct.

Unfit persons excused.

§ 3587. Any person appearing to the court to be an unfit person to serve on the jury, may be excused from sitting on the jury, on his own motion, or at the instance of either party.

Alien not entitled to jury of part aliens

§ 3588. No alien is entitled to a jury of part aliens or part strangers, for the trial of any indictment.

Pleas in abatement; how verified.

§ 3589. No plea in abatement, or other dilatory plea to an indictment, must be received, unless the same is verified by oath; or unless its truth appear by some matter of record or other written evidence accompanying it.

Plea; how determined.

§ 3590. A plea in criminal proceedings, is to be determined according to its substance, and not by its commencement or conclusion.

Pleas to the organization of grand jury

§ 3591. No objection can be taken to an indictment by plea in abatement or otherwise, on the ground that any member of the grand jury was not legally qualified as a juror, or to pass on an indictment against the defendant; or that the persons composing the grand jury were not legally drawn or summoned; or any other ground going to the formation of the grand jury, except that they were not drawn in the presence of the officers, or a majority of them, designated by law; and in such case, the same must be filed at the term at

which the indictment is found; and if sustained, the court must not discharge the defendant, but he may be held in custody, or bailed as the case may be, to answer to another indictment at the same or next term of the court; and the delay thus occasioned must not be computed within the time allowed for commencing such prosecution.

Special grand jury.

§ 3592. The preceding section does not apply to any special grand jury, summoned by the direction of the court; and in such case, no objection can be taken to the formation of the grand jury.

Severance of trial.

§ 3593. When two or more defendants are jointly indicted, they may be tried separately or together, at the discretion of the court.

Court may direct acquittal of one defendant if no evidence against, and he may then be a witness.

§ 3594. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a defendant the evidence is not sufficient to put him on his defence, the court may direct a verdict of acquittal as to such defendant; and being acquitted, he may be a witness.

Court may discharge a defendant that he may be a witness.

§ 3595. When two or more persons are included in the same indictment, the court may, at any time before the defendant has commenced his evidence, direct any defendant to be discharged from an indictment, that he may be a witness for the state, and such order operates as an acquittal of such defendant.

Slaves witnesses in cases where free persons of color charged.

§ 3596. Slaves are competent witnesses in all cases where free persons of color are charged with any offence against the laws of this state.

Evidence in rape, &c.

§ 3597. Proof of actual penetration is sufficient to sustain an indictment for rape, or the crime against nature, when upon the trial of an indictment for either of such offences, the act is shown to have been committed forcibly, and against the consent of the person on whom the offence was committed.

Intent to injure or defraud.

§ 3598. When an intent to injure, defraud, or cheat is necessary to be shown, in order to constitute the offence, it is sufficient if such intent be to injure, defraud or cheat the United States, this state, or any other state, or any public officer thereof, or any county, city, town, corporation, body politic, or private individual.

Party to whom fine goes.

§ 3599. When the fine assessed is given to the injured party; if he becomes a witness for the state, such fine is recovered for the use of the county in which the indictment is found; and no person is rendered incompetent to testify in any criminal case by reason of his being the person injured or

Party injured entitled to reward.

defrauded, or intended to be injured or defrauded; or because he would be entitled to any reward on the conviction of the defendant; or may be liable to pay the costs, or because he is bail for the defendant.

Convictions on evidence of accomplice

§ 3600. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by such other evidence as tends to connect the defendant with the commission of the offence; and the corroboration is not sufficient, if it merely show the commission of the offence or the circumstances thereof.

Offence of different degrees.

§ 3601. Upon an indictment for any offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; or of an attempt to commit the offence; and the defendant may also be found guilty of any offence, the commission of which is necessarily included in that with which he is charged, whether it be a felony or misdemeanor.

Juror having knowledge of controverted fact.

His duty.

§ 3602. If any juror have any personal knowledge respecting a fact in controversy, he should declare it in open court during the trial; if during the retirement of a jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court; and in either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Sickness of juror after jury retire.

§ 3603. If after a jury retire, one of them becomes so sick as to prevent the discharge of his duty, or any other cause or accident occur to prevent their being kept together for deliberation, they may be discharged.

Adjournment discharges jury.

§ 3604. A final adjournment of the court discharges the jury.

When jury cannot agree as to all.

§ 3605. In an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they agree, on which a judgment must be entered accordingly; and the case as to the other defendants may be tried by another jury.

Polling jury.

§ 3606. When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case they must be severally asked if it is their verdict; and if any answer in the negative, the jury must be sent out for further deliberation.

Sickness of juror before jury retire.

§ 3607. If before the jury retire, a person becomes so sick as in the opinion of the court to incapacitate him for the discharge of his duty, or any other cause occur, which in the opinion of the court renders it necessary to discharge a juror, such juror may be discharged, a new juror summoned to supply his place, and the trial be commenced anew.

ARTICLE II.

Of the removal of the trial.

SEC.

3608. Trial removed on application of defendant, supported by affidavit.
3609. What the application must set forth.
3610. How often, and to what county the trial may be removed.
3611. In misdemeanors, the defendant must consent that the state witnesses be examined by interrogatories.
3612. The defendant must also pay mileage to the clerk.
3613. Duty of the clerk on the order being made.
3614. Duty as to the original subpœnas.
3615. Defendant tried on copy of indictment.
3616. How witnesses are subpœnaed after removal.
3617. Disposition of fines and forfeitures on removal.
3618. In case of acquittal, state witnesses, how paid.

Removal of trial.

§ 3608. The trial of any person charged with an indictable offence may be removed to another county on the application of the defendant, duly supported by affidavit.

Application for.

§ 3609. The application must set forth specifically the reasons why the defendant cannot have a fair and impartial trial in the county in which the indictment was found, and must be made as early as practicable before the trial, or may be made after conviction, on a new trial granted.

Changed but once, and to nearest county.

§ 3610. The trial can be removed but once, and must be removed to the nearest county, free from exception.

In misdemeanors not to be made unless party consent to take deposition of state witnesses.

§ 3611. In misdemeanors no order removing the trial must be made, unless the defendant consent that the witnesses for the state may be examined by interrogatories, on such terms as the court may prescribe.

Mileage to be paid.

§ 3612. At the time of obtaining the order, the defendant must also, in case of misdemeanors, pay to the clerk five cents for each mile to and from the court house of the county to which the trial is removed.

Clerk to make transcript, &c.

§ 3613. When an order removing the trial in a criminal case is made, the clerk must make out a transcript of the caption of the grand jury, the indictment, with the indorsement thereon, and all entries relating thereto, the undertakings or recognizances of the defendant, and all the orders and judgments upon the same, the order for the removal of the trial, and all the other orders in the cause, attach his certificate thereto, and forward it, sealed up, by a special messenger, or deliver such transcript and certificate to the clerk of the court of the county to which the trial is ordered to be removed.

Send or deliver it to clerk of county to which the case is removed.

Subpœnas to be enclosed.

§ 3614. He must also inclose in a package, and deliver to such clerk the original subpœnas in the cause.

Trial on copy of indictment

§ 3615. The defendant must be tried on the copy of the indictment so certified, and if the same is necessary, the court may, on a proper showing, direct the clerk to certify any portion of the record which he has omitted, or to rectify the same.

Witnesses; by whom subpœnaed.

§ 3616. The clerk of the court in which the indictment was found must, at any time before the delivery to the clerk of the county to which the trial is removed, on the application of the defendant or the solicitor, subpœna witnesses for the state or the defendant, to the court to which the trial is removed; and the sheriff must return such subpœnas to such court. After the delivery of the transcripts, the subpœnas must be issued by the clerk of the court to which the trial is removed.

Fines and forfeitures.

§ 3617. All fines and forfeitures arising out of criminal cases removed to another county, go to the county from which such trial was removed, and judgment must be entered in favor of the state for the use of such county.

Witnesses; how paid on acquittal or insolvency of defendant.

§ 3618. The certificates of the state witnesses, in case of the acquittal of the defendant, or in case of his insolvency on conviction, upon being certified by the clerk of the court in

which the trial is had, must be received in payment of public dues of the county from which such trial was removed, or paid out of the fines and forfeitures of such county.

CHAPTER XI.

GENERAL PROVISIONS.

SEC.
3619. What disposition is made of fines and forfeitures, and the entry of judgment for the same.
3620. Fine in indictable offences, how assessed.
3621. Imprisonment, by whom assessed.
3622. Imprisonment in the penitentiary, when inflicted.
3623. Rule as to the assessment of imprisonment in the penitentiary.
3624. Where fine is assessed, judgment may be confessed with security.
3625. Term of imprisonment where fine and costs are not paid.
3626. The form of the judgment in such cases.
3627. Persons imprisoned for fines or costs may, after expiration of their term, proceed as insolvent debtors.
3628. Payment, on confessing judgment for fine, no bar to additional imprisonment.
3629. Misdemeanors punished by fine only, can be punished by imprisonment, only on non-payment of fine and costs.
3630. Prosecutor may confess judgment for costs when imposed; on failure so to do, or to pay, imprisoned.
3631. Execution may issue for fine or costs.

SEC.
3632. Imprisonment, when to commence on different convictions.
3633. Benefit of clergy abolished.
3634. Punishment for second conviction of the same penitentiary offence.
3635. When the first offence was committed in another state.
3636. Effect of sentence to penitentiary.
3637. The effect of a sentence to imprisonment in the penitentiary for life.
3638. Capital punishment, sentence.
3639. By whom executed.
3640. Where capital punishment must be executed.
3641. Certain officers and persons to be summoned to attend, and to certify execution.
3642. What other persons may be present.
3643. When convict pregnant, jury to be summoned.
3644. Inquisition, how taken.
3645. If the jury find the convict pregnant, execution is suspended and governor notified.
3646. When the convict is no longer with child, the governor must appoint a day for execution.
3647. Proceedings when convict is not executed according to sentence.
3648. If at large, to be arrested and committed.

Disposition of fines and forfeitures.

§ 3619. All fines and forfeitures in state cases, unless otherwise provided, go to the county in which the indictment was found, and judgment is entered for the state for the use of the county.

Jury to assess fine.

§ 3620. Where an indictable offence is punished by fine only, or by fine and imprisonment, the jury must assess the fine, unless it is otherwise provided.

Court to fix imprisonment.

§ 3621. The court, in all cases, must fix the imprisonment, unless the power is expressly conferred on the jury.

Imprisonment in penitentiary.

§ 3622. Imprisonment in the penitentiary must in no case be inflicted by the court, unless the power is expressly given.

Extent of such imprisonment.

§ 3623. Whenever an offender is punishable, on conviction, by imprisonment in the penitentiary, for a term not less

than any specified number of years, and no limit to the duration of such imprisonment is declared, the court may, in its discretion, sentence the offender to imprisonment for the term of his natural life, or for any number of years not less than the term prescribed.

Confession of judgment for fine.

§ 3624. In cases where a fine is assessed, the court may allow the defendant to confess judgment for the fine and costs, with good securities.

Imprisonment for fine and costs.

§ 3625. If the fine and costs are not paid, or the judgment confessed, according to the provisions of the preceding section, the defendant must be imprisoned as follows:

1. If the fine is under fifty dollars, ten days.
2. If as much as fifty, and less than one hundred dollars, thirty days.
3. If as much as one hundred, and less than two hundred dollars, sixty days.
4. If as much as two hundred dollars, and less than five hundred dollars, ninety days.
5. If as much or exceeding five hundred dollars, six months.

Judgment in such cases.

§ 3626. In all cases where the imprisonment is for the non-payment of the fine or costs, the judgment must not only direct the imprisonment for the time specified in the preceding section, but also, that after the expiration of such term he be confined until the fine and costs are paid, or he is otherwise discharged by law.

May take the benefit of insolvent debtors' law.

§ 3627. All persons imprisoned for the non-payment of any fine or costs, who are unable to pay the same, after the term of imprisonment has expired, may proceed as an insolvent debtor in civil cases, giving notice to the solicitor or the judge of probate.

Payment of fine no bar to additional imprisonment.

§ 3628. The payment of or confessing judgment for the fine and costs, or imprisonment for the non-payment, does not operate to prevent the court, in cases in which it is vested with the power, from imposing additional imprisonment.

Imprisonment; when imposed.

§ 3629. In convictions for misdemeanors expressly embraced by this code, which are punished by a fine only, imprisonment must be imposed only in the event of the non-payment of such fine and costs.

Prosecutor may confess judgment for costs.

§ 3630. When the costs are imposed on the prosecutor, he may confess judgment for the same, with security, and failing so to do, or to pay the same, must be imprisoned for ten days.

Execution for fines and costs.

§ 3631. The clerk may issue execution for the fine and costs, or any portion of the same remaining unpaid, as in civil cases.

Two or more convictions.

§ 3632. When persons are sentenced to imprisonment, on two or more convictions, the imprisonment on each subsequent conviction must commence at the termination of the imprisonment for the preceding conviction.

No clergy.

§ 3633. There is no benefit of clergy in this state.

Conviction of same offence

§ 3634. If any person is convicted of an offence punishable by imprisonment in the penitentiary, and after being par-

doned, or after the expiration of his term of sentence, is convicted of the same offence, committed after such pardon or expiration of his term, he must, on such subsequent conviction, be imprisoned in the penitentiary for at least the same period that he was sentenced on the former conviction, and in addition thereto, one-fourth of the length of the term of the former sentence; the imprisonment, however, not to extend beyond the longest term prescribed for such offence. after pardon or expiration of term.

§ 3635. Every person convicted in any other state or country of an offence which, if committed in this state, would have been punished by imprisonment in the penitentiary, must, on conviction for the same offence subsequently committed in this state, be punished as if the first conviction had been in this state. Conviction after having been convicted in another state.

§ 3636. The effect of a sentence of imprisonment in the penitentiary is to put an end to the right of the convict to execute the office of an executor, administrator, or guardian, in the same manner as if he had been removed from office, and to extinguish all private trusts not susceptible of delegation by such convict. Effect of sentence of imprisonment in penitentiary.

§ 3637. When the imprisonment is for life, the convict is regarded as civilly dead, but may make and publish his last will and testament at any time within six months after his sentence. When for life.

§ 3638. Whenever any person is sentenced to the punishment of death, the court must direct that he be hanged by the neck until he is dead; and such sentence must be executed by the proper executive officer of the law, on such day as the court may appoint, not less than four or more than eight weeks from the time of the sentence, unless such court suspends the execution on account of the reference of some matter of law arising on the trial, for the determination of the supreme court. Sentence to capital punishment.

§ 3639. The sentences of courts, directing the execution of a person according to the provisions of the preceding section, must be executed by the sheriff or his deputy, or the officer acting in his place. By whom executed.

§ 3640. The punishment of death must be inflicted either in the prison where the convict is confined, or within the enclosed grounds of such prison, if there be any; or if the arrangements of the prison be such that this cannot be done, then in such place as the officer whose duty it is to inflict such punishment, directs. Where executed.

§ 3641. Such officer must give at least three days' previous notice to the judge of the probate court, the clerk of the circuit court, and at least three justices of the peace, if there be so many in the county, and the physicians of the neighborhood, who may be present and witness the execution; and the persons thus attending must make out and sign a certificate in writing, declaring that they witnessed the execution of the convict pursuant to his sentence. Who to be present, &c.

§ 3642. Such officer must also permit the counsel of, and

Counsel and ministers, &c.

such ministers of the gospel as the convict may desire, and his relations, to be present; and also such officers of the prison, deputies, constables, military guard, and other assistants as he may think proper.

When convict pregnant.

§ 3643. If there is reason to believe a female convict is pregnant, the sheriff must, with the concurrence of a judge of the circuit court, summon a jury of six disinterested persons, as many of whom must be physicians as practicable.

Proceedings in such case.

§ 3644. The sheriff must also give notice to the solicitor, or in his absence, to any attorney who may be appointed by a circuit judge to represent the state, and who has authority to issue subpœnas for witnesses, and the jury, under the direction of the sheriff, or officer acting in his place, must proceed to ascertain the fact of pregnancy; and must state their conclusion in writing, signed by them and the sheriff.

Execution suspended on verdict of jury.

§ 3645. If such jury are of opinion, and so find, that the convict is with child, the sheriff, or officer acting in his place, must suspend the execution of the sentence, and transmit the finding of the jury to the governor.

When no longer with child to be executed.

§ 3646. Whenever the governor is satisfied that such convict is no longer with child, he must issue his warrant to the sheriff, appointing a day for her to be executed according to her sentence; and the sheriff, or other officer, must execute the sentence of the law, on the day so appointed.

When convict not executed.

§ 3647. When, from any cause, any convict sentenced to death has not been executed pursuant to such sentence, the same stands in full force, and the circuit court of the county in which such convict was tried, on the application of the solicitor of the circuit, must direct the convict to be brought before it, or if necessary, must issue an order in writing to that effect; or if at large, may issue a warrant for his apprehension, and upon such convict being brought before such court, it must inquire into the circumstances, and if no legal reason exists against the execution of such sentence, must sentence the convict to execution on a day to be by such court appointed.

Warrant to issue.

§ 3648. If such convict is at large, any magistrate may issue a warrant for his apprehension; and if no good reason is shown for his discharge, must commit him, that he be forthcoming to abide the order and sentence of the circuit court in which he was tried.

CHAPTER XII.

OF APPEALS AND WRITS OF ERROR IN INDICTABLE CASES.

SEC.
3649. Any legal question may be reserved by defendant.
3650. How reserved.
3651. Transcript to be made out by clerk, and transmitted to clerk of supreme court by first day of next term.
3652. When points reserved, how judgment in misdemeanors is rendered.
3653 If bailed, and does not appear, writ of arrest to issue against defendant.
3654. Proceeding on the arrest of defendant in such case.
3655. Proceeding on subsequent prosecutions.
3656. In felonies, judgment rendered, but execution suspended.
3657. Writs of error may be awarded by supreme court, or its judges.
3658. If awarded in vacation, entry to be made.
3659. Duty of clerk on the order being filed.
3660. When the defendant is in custody, and execution of sentence postponed.
3661. When the offence is a misdemeanor, defendant may be admitted to bail.
3662. Proceedings if defendant fails to appear.
3663. No assignment of, or joinder in error necessary in criminal cases.
3664. If judgment affirmed, execution directed.
3665. Proceedings when judgment is reversed.
3666. If day for execution passed, must appoint a day.

Questions of law reserved by defendant

§ 3649. Any question of law arising in any of the proceedings on an indictment, may be reserved by the defendants, but not by the state, for the consideration of the supreme court.

As in civil cases.

§ 3650. If such question does not distinctly appear on the record, it must be reserved by an exception taken and signed by the judge as in civil cases.

Transcript.

§ 3651. When any question of law in a criminal case is reserved for the determination of the supreme court, the clerk of the court in which judgment is rendered must make out a complete transcript of the record, attach his certificate thereto, and transmit it to the clerk of the supreme court, by the first day of the term next after judgment.

Judgment rendered, but suspended.

Bail.

§ 3652. When any question of law is reserved, the presiding judge must render judgment on the conviction; but the execution of the judgment in cases of misdemeanors, must be suspended until the next term of the court, or the defendant may give bail, with sufficient securities, to appear at such court, and abide the judgment rendered.

Failure to appear, writ of arrest may issue.

§ 3653. If the defendant does not appear according to the undertaking, a writ of arrest must be issued.

Committed or bailed.

§ 3654. If taken upon such writ of arrest, the defendant must be committed to jail, unless he give bail with sufficient securities, to be taken by the sheriff, for his appearance at the next term of the court from which the writ of arrest issued, to abide by the judgment rendered; but such bail must be in the same amount as the first undertaking, which amount must be endorsed by the clerk on the writ of arrest.

§ 3655. Should the defendant fail to appear on such un-

Proceedings, &c., on forfeiture.

dertaking, another writ must issue, and so on, until the judgment of the court has been executed.

In felonies judgment rendered but execution suspended.

§ 3656. In cases punishable capitally, or by imprisonment in the penitentiary, judgment must be rendered; but the execution thereof suspended for at least sixty days after the commencement of the next succeeding term of the supreme court.

Writs of error; when issued.

§ 3657. Writs of error upon judgments rendered on any indictment, may issue on an order to that effect, addressed to the clerk of the court in which the judgment was rendered, by any one of the judges of the supreme court, in vacation, or by the supreme court, in term time; but such writ must only be granted upon some error of law, apparent on the transcript of the record.

Judge awarding writ to cause entry to be made.

§ 3658. Any judge of the supreme court, who awards a writ of error in vacation, must cause an entry thereof to be made on the minutes of such court at its next term; and all writs of error in criminal cases, not prosecuted to the term to which they are returnable, must be dismissed, and no writ of error afterwards allowed.

Duty of clerk on order being filed.

§ 3659. When an order is made for the allowance of a writ of error according to the provisions of section 3657, the clerk of the court in which the judgment was rendered must, on filing such order, furnish the party a certificate of the filing thereof; and make out a writ of error and transcript of the record and proceedings had in the case, and after having attached such transcript to the writ, he must deliver the same, on demand, to the party suing out the writ, or his attorney.

Defendant to remain in custody.

§ 3660. If the defendant in the case for the removal of which such writ of error is allowed, is in the custody of the sheriff, and the order of allowance directs a stay of proceedings on the judgment, the sheriff must, on being served with the clerk's certificate that such order has been filed, and a copy of the order of allowance, keep the defendant in his custody, without executing the sentence which may have been passed on his conviction, and detain him, to abide the judgment rendered on the writ of error.

On writ of error on misdemeanors defendant may be bailed.

§ 3661. If the offence charged for the removal of which the writ of error is allowed is punishable by fine, or by fine and imprisonment in the county jail, the judge, or court making the order for such writ, must also direct the clerk of the circuit court to admit the defendant to bail, in a sum prescribed by such judge or court, with sufficient securities, for his appearance at the next term of the circuit court in which judgment was rendered against him, to abide such judgment as may be rendered on the writ of error.

Failure to appear.

§ 3662. If the defendant fails to appear, a writ of arrest must issue, and the same proceedings be had thereon as are prescribed in sections 3654 and 3655.

No assignment of error necessary.

§ 3663. No assignment of error or joinder in error is necessary in criminal cases taken to the supreme court, under the provisions of this chapter; but the court must render such judgment on the record as the law demands.

§ 3664. If the supreme court affirm the judgment, it must direct the sentence to be executed, and the same must be executed accordingly. Sentence executed if affirmed.

§ 3665. If the judgment is reversed, the supreme court may direct a new trial, or that the defendant be discharged; in which case no forfeiture can be taken on his undertaking of bail; or that he be held in custody until discharged by due course of law, or such other order as the case may require. If judgment reversed.

§ 3666. In criminal cases taken to the supreme court by writ of error, when the day appointed for the execution of the judgment of the circuit court has passed, if the judgment is affirmed, the supreme court must, by its judgment, fix a day for the execution of the judgment of the circuit court, and such judgment must be executed accordingly. If day of execution passed another day must be fixed

CHAPTER XIII.

OF BAIL IN CRIMINAL CASES.

SEC.
3667. Meaning of the term "admission to bail."
3668. In what the taking of bail consists.
3669. Cases in which the defendant must not be bailed.
3670. Before conviction, he is entitled to bail in all other cases.
3671. In capital cases, when entitled to bail as a matter of right.
3672. When indictment for capital offence, is dismissed.
3673. In what cases application for bail to supreme court.
3674. When defendant is admitted to bail by supreme court.
3675. Sheriff in certain cases to convey defendant before judge or chancellor.
3676. Form of bail when not taken in court.
3677. Form of when put in, in court.
3678. The effect of the undertaking of bail.
3679. When forfeited.
SEC.
3680. Bail for lunatics, married women and minors.
3681. The qualifications of bail.
3682. If the qualifications of bail are doubtful, they must be examined on oath.
3683. Certain cases in which bail are not discharged.
3684. Recognizances and bail bonds used before the adoption of the code, valid.
3685. Bail may surrender principal at any time before they are finally charged.
3686. May arrest defendant on copy of undertaking.
3687. To whom surrender made, and how discharged on bail in misdemeanors after surrender.
3688. When the undertaking is not sufficient, the defendant must enter into a new one.
3689. Undertakings of bail, by whom, when, and where returned.

§ 3667. Admission to bail is the order of a competent court, magistrate or officer, that the defendant be discharged from actual custody on bail. Admission to bail.

§ 3668. The taking of bail consists in the acceptance by a competent court, magistrate, or officer, of the undertaking of sufficient bail for the appearance of the defendant, according to the legal effect of his undertaking, or that he will pay to the state a certain specified sum. Taking of bail.

Cases in which defendant cannot be admitted to bail.

§ 3669. The defendant cannot be admitted to bail in cases:

1. Which are or may be punishable with death, where the court or magistrate is of opinion, on the evidence, that the defendant is guilty of the offence, in the degree punished capitally.

2. Where the defendant is charged with a personal injury on another, likely to produce death, and under such circumstances as if death ensue, it would be murder in the first degree.

Bailed in other cases.

§ 3670. In all other cases, before conviction, the defendant is entitled to bail as a matter of right.

When entitled to bail in capital cases.

§ 3671. In cases punished capitally, the defendant is entitled to bail as a matter of right, when the state, after the finding of the indictment, has continued the case twice without his consent, for the testimony of absent witnesses.

Dismissal of indictment, &c.

§ 3672. In such case, if the indictment is dismissed, the defendant, on application for bail, is entitled to the benefit of any continuance had upon such indictment by the state for absent witnesses; and if another indictment is not found at the same court at which the former is dismissed, the order of dismissal is to be taken as a continuance by the state for absent witnesses.

Application for bail refused. May apply to supreme court.

§ 3673. If application for bail be made to a circuit court, or circuit judge, or chancellor, and denied, no subsequent application can be made; but the evidence in such case may be set out on exceptions, and the application made thereon to the supreme court.

Order of supreme court to fix the amount, &c.

§ 3674. When an order is made by the supreme court admitting a defendant to bail, it must fix the amount thereof, and direct that the same be taken by a chancellor, circuit judge, or sheriff, or clerk of the court of the county in which the defendant is confined.

Defendant conveyed before officer.

§ 3675. If the order to take bail is directed to a chancellor or circuit judge, the sheriff having the custody of the defendant must convey him before such judge or chancellor, that bail may be taken.

Form of undertaking of bail.

§ 3676. Bail when not taken in open court, is given by a written undertaking, signed by the defendant, and at least two sufficient securities, and approved by the magistrate or officer, and may be substantially in the following form:

The State of Alabama, }
County. } We, A. B., C. D. and E. F., agree to pay to the state of Alabama five thousand dollars, (or other sum, as prescribed by the magistrate or officer,) unless the said A. B. appear at the next term of the circuit court of —— county, and from term to term thereafter, until discharged by law, to answer the offence of murder, (or other offence, as the case may be.)

Signed, A. B.
C. D.
E. F.

Approved.

G. H., (name of officer.)

§ 3677. When put in, in open court, it may be entered on the minutes as follows: Form of entry when put in, in court.

The State *vs.* A. B. Came into court the said A. B., C. D., and E. F., and agreed to pay the state of Alabama two thousand dollars, (or other sum, as prescribed by the court,) unless the said A. B. appear at the present term of this court, and from court to court thereafter, to answer an indictment for assault and battery, (or other offence, as the case may be.)

§ 3678. The undertaking of bail binds the parties thereto, jointly and severally, for the appearance of the defendant on the first day of the court, from day to day of such term, and from day to day of each term thereafter, until he is discharged by law; and if the trial is removed to another county, for the appearance of the defendant from day to day of each term of the court to which it is removed, until discharged by law. Effect of undertaking.

§ 3679. The essence of all undertakings of bail, whether upon a warrant, writ of arrest, suspension of judgment, writ of error, or in any other case, is the appearance of the defendant at court; and the undertaking is forfeited by the failure of the defendant to appear, although the offence, judgment, or other matter, is incorrectly described in such undertaking; the particular case, or matter to which the undertaking is applicable, being made to appear to the court. Idem.

§ 3680. Lunatics, married women, and infants need not acknowledge or execute the undertaking, but any person may enter into an undertaking for their appearance. Lunatics, married women and infants.

§ 3681. The qualifications of bail are as follows: Qualifications of bail.

1. Each of them must be a resident of, and a householder, and a freeholder, within the state.

2. They must each be worth the amount expressed in the undertaking, exclusive of property exempt from execution; but the court, magistrate, or officer, in taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to two sufficient bail.

§ 3682. In all cases in which there is a reasonable doubt as to the sufficiency of the bail, the court, magistrate, or officer, must require them to answer fully on their oaths as to their qualifications. When sufficiency of bail doubtful, to be sworn.

§ 3683. No bail are discharged by reason of the want of any of the qualifications required in this chapter; or by reason of there not being the requisite number of bail; or by reason of any other agreement than is expressed in the undertaking; or by reason of the infancy, coverture, lunacy, or any other incapacity of any of the other parties thereto; or because the defendant has not joined in the same. Bail not discharged for want of qualifications, &c.

§ 3684. Recognizances and bail bonds taken in the form in use, before the adoption of this code, are valid; the same not being void for want of a seal, and the same rules being applicable to such bonds and recognizances as are applicable to undertakings of bail under this code. Recognizances and bail bonds under old law valid.

May surrender principal

§ 3685. At any time before the bail are finally discharged, they may surrender the defendant in exoneration of themselves.

How arrested by bail, &c.

§ 3686. For this purpose, they may arrest the defendant on a certified copy of the undertaking, at any place in this state, or may, by a written authority indorsed on such copy, authorize another person to do so.

To whom surrender made.

§ 3687. The surrender must be made to the sheriff of the county in which the court to which the defendant is bound to appear is held, or to which the trial is removed; and if the charge is for a misdemeanor, the sheriff may discharge him on his giving new bail, otherwise must keep him in jail until discharged by law.

When bail required to enter into new undertaking.

§ 3688. A defendant may be required by the court to enter into another undertaking, when it appears that the undertaking entered into is not sufficient, or has from any cause become insufficient.

Undertaking returned, to whom and when.

§ 3689. All undertakings of bail must be returned by the magistrate, or officer by whom the same are taken, to the clerk of the court to which the defendant by the undertaking is to appear, within the same time and in the same manner as writs of arrest are returnable under the provisions of section 3552.

CHAPTER XIV.

OF FORFEITURES AGAINST JURORS, WITNESSES, AND ON UNDERTAKINGS OF BAIL.

Sec.		Sec.	
3690.	Cases in which a forfeiture may be made absolute at the court to which it is taken.	3695.	Conditional judgment may be set aside for cause, or made absolute for all or any portion,
3691.	On forfeiture, a conditional judgment to be entered and form of the same.	3696.	When such judgment is set aside no costs must be charged.
3692.	Notice of such judgment to issue to the defendant, and form of such notice.	3697.	In what cases two notices returned not found are equivalent to personal service.
2693.	How notice executed and returned.	3698.	Excuses to be heard at any time when court is not engaged.
3694.	If notice not served, other notices may issue.		

Forfeitures not to be made absolute except in certain case.

§ 3690. No forfeiture against a witness, juror, or party to any undertaking of bail, must be made absolute at the court at which the forfeiture is taken, except for a breach of the peace, where the facts are ascertained by a jury, as provided for by section 3358, or unless such juror, witness or party appear and show cause against such forfeiture.

Conditional judgment on forfeiture.

§ 3691. Whenever an undertaking for the appearance of a witness on the part of the state or a defendant is broken, by the failure of such witness or defendant to appear, a con-

ditional judgment must be entered in favor of the state, for use of the proper county, against the parties to the undertaking, for the sum therein expressed; which judgment may be in substance as follows:

The State, } *vs.* A— B—. } Indictment for assault and battery (or other offence, as the case may be.)

It appearing that the said A. B., C. D., and E. F., agreed to pay the state of Alabama five hundred dollars, (or other sum, as the case may be,) unless the said A. B. appeared at this term of the court, to answer in this case, and the said A. B. having failed to appear, it is ordered that the state of Alabama, for the use of —— county, recover of the said A. B., C. D. and E. F. on such undertaking, the sum of five hundred dollars, (or other sum as the case may be,) unless they appear at the next term of this court, and show cause why this judgment should not be made absolute. Form of.

§ 3692. A notice of the rendition of such judgment must be issued by the clerk of the court in which the same was rendered, with a copy of such notice for each defendant, requiring them to appear at the next term of such court and show cause why the judgment should not be made absolute; and may be in the following form: Notice of such judgment.

The State of Alabama, } To A. B., C. D. and E. F. You County. } are hereby notified, that at the fall term, one thousand eight hundred and fifty-one, (or as the case may be,) of the circuit court of this county, the following judgment was rendered against you: Form of.

The State, } *vs.* A— B—. } "Indictment of larceny," (or other offence, as the case may be.)

It appearing that the said A. B., C. D. and E. F., &c., (setting out the judgment in substance,) and that said judgment will be made absolute, unless you appear at the next term of such court and show cause against the same.

§ 3693. This notice may be executed by the sheriff of any county in the state, and must be returned by the first day of the next court, with the proper return indorsed thereon, or the sheriff may be attached for contempt. By whom executed and when returned.

§ 3694. If the notice is not served on any of the parties, such other notices may from time to time be issued as are necessary. If not served other notices may issue.

§ 3695. If the defendants to such judgment appear and show good cause, to be determined by the court, upon the oath of such defendant, or other proof, the judgment rendered may be set aside; and if not it may be made absolute for all or any portion of the same, according to the circumstances. Defendants excused on cause.

§ 3596. When a conditional judgment is set aside, no costs must be charged against the party. If set aside no costs.

§ 3697. When two notices of a conditional judgment, upon an undertaking for the appearance of a witness or defendant, have been returned not found by the proper officer of the Return of "not found" on two notices equiva-

lent to service.

county in which the undertaking was entered into, such returns are equivalent to a personal service, and judgment may be made absolute thereon.

When excuses must be heard.

§ 3698. All excuses for forfeitures taken must be heard at any time during court, on application, if the court is not engaged in other business.

CHAPTER XV.

REPRIEVES, COMMUTATIONS AND PARDONS.

SEC.
3699. Power of the governor as to reprieves, commutations and pardons.
3700. Reasons for granting to be entered, and all documents in relation to, preserved.
3701. Punishment of death as to certain offences may be commuted.
3702. Punishment of certain other offences commuted.
3703. Commutation, to whom and how certified, and proceedings thereon.
SEC.
3704. Imprisonment in the penitentiary in certain cases may be remitted on the recommendation of the inspectors.
3705. In case of uniform good conduct, portion of imprisonment to be remitted.
3706. Presiding judge in certain cases to postpone execution of sentence to apply for a pardon.
3707. Judge to make statement in certain cases of the offence, &c., to be forwarded to the governor.

Governor may grant.

§ 3699. The governor has power to grant reprieves, commutations and pardons, and also to remit fines and forfeitures, in all cases after conviction, except treason and impeachment, subject to the regulations provided in this chapter.

Entry to be made, &c.

§ 3700. He must cause to be entered in a book, kept for that purpose, his reasons for granting pardons, commuting punishment, or remitting fines and forfeitures, and preserve on file all documents on which he acted.

Commutation of capital punishment.

§ 3701. When punishment of death is imposed for any offence committed before the second day of November, one thousand eight hundred and forty-one, he may commute such punishment by substituting therefor imprisonment in the penitentiary for life, or for the term of twenty years.

Of ignominious punishment.

§ 3702. He may, in like manner, with the consent of the convict, commute any sentence imposing an ignominious punishment, for an offence committed before the second day of November, one thousand eight hundred and forty-one, by substituting therefor imprisonment in the penitentiary for two years.

Statement of commutation to be certified to clerk.

§ 3703. In the cases provided for by the two preceding sections, he must cause a statement of such commutation to be certified to the clerk of the court in which the conviction was had, who must enter the same of record at the next term thereafter, under the direction of the presiding judge; and the convict whose punishment is thus commuted, must be

conveyed to and imprisoned in the penitentiary, as if he had been sentenced thereto by a court of competent jurisdiction.

Portion of imprisonment remitted in certain cases.

§ 3704. He may in his discretion remit a portion of the imprisonment of a convict in the penitentiary upon the recommendation of the board of inspectors in writing, that the convict has conducted himself in an unexceptionable manner, during his imprisonment; and that the remission of the remainder thereof would not in their opinion be inconsistent with the public good; but no such remission must be granted on the recommendation of the inspectors alone, unless the convict has been imprisoned one-third of the time for which he was sentenced, or when the convict was sentenced for life, or more than twenty years, unless he has served seven years.

Two months of each year deducted in certain cases.

§ 3705. If it appears from the reports of the board of inspectors that the conduct of the convict has been unexceptionable during the time of his imprisonment, he may direct that two months be deducted from each year, dating from the commencement of his imprisonment; but if, after any year of unexceptionable conduct, the convict is guilty of bad conduct, he loses the benefit of the prior year or years of unexceptionable conduct.

Sentence may be postponed to apply for pardon.

§ 3706. In case of the conviction and sentence of a defendant to the penitentiary, if the presiding judge is of opinion that such defendant should be pardoned, he may postpone the execution of the sentence for such time as may be necessary to make application to the executive therefor.

Presiding judge to make statement to governor in certain cases

§ 3707. Upon the conviction of any person sentenced to the penitentiary for five years or more, it is the duty of the presiding judge to make a statement in writing, setting forth the name of the party, the offence for which he was tried, and the term of the court, with the character of the evidence on which he was convicted, and the circumstances of aggravation or mitigation which may have been developed at the trial; which statement, signed by him, must be transmitted to the governor within thirty days thereafter, and be by him filed in the executive office.

CHAPTER XVI.

OF THE WRIT OF HABEAS CORPUS, AND PROCEEDINGS THEREON.

SEC.

3708. Who may prosecute habeas corpus.
3709. Who are not entitled to the benefit of.
3710. To what officers the application must be addressed.
3711. When made to a chancellor or judge, must be addressed to such officer residing or being nearest to the place of confinement.
3712. When not so made, what facts must be shown.
3713. What the application must state.

SEC.
3714. When granted, and before whom the writ is made returnable.
3715. Form of the writ.
3716. In case the name of the person confined is uncertain, how described.
3717. How the person having the custody of the party may be described.
3718. Officer issuing writ may also direct sheriff to take the person confined.
3719. Such person must, on being produced, be bailed, discharged, or remanded.
3720. If another person has an interest, notice to be given of the time, place, &c., where writ is returnable.
3721. Notice to the solicitor to be given in certain cases, and to the prosecutor.
3722. Subpœnas, by whom issued.
3723. To what officers the subpœnas are directed.
3724. By what officers writ of habeas corpus may be served.
3725. Manner of service.
3726. In certain cases, by posting a copy of the writ.
3727. Return of the writ, when made.
3728. What the return must state.
3729. The return must be signed and sworn to.
3730. Person required by the writ must be produced on the return, unless in certain cases.
3731. In case the party not produced, the reason must be stated in the return and sworn to; proceedings in such case.
SEC.
3732. Return may be denied, and facts examined and how.
3733. Examination may be continued.
3734. How the party is disposed of during the examination.
3735. If he be bailed and fails to appear, his undertaking forfeited, and proceedings thereon.
3736. Party to be bailed if the offence is bailable and sufficient bail offerred, if not, amount of bail to be indorsed on warrant.
3737. Judge or chancellor may reduce bail.
3738. On giving the amount of bail required, the sheriff may discharge.
3739. Undertaking of bail, to whom and when returned.
3740. Cases in which the party must be remanded.
3741. Cases which cannot be inquired into on the return.
3742. Certain persons not to be discharged.
3743. Persons held as slaves cannot try their right to freedom by habeas corpus.
3744. Certain cases in which party is detained by legal process, when he may be discharged.
3745. In bailable cases the party may be admitted to bail.
3746. May be detained in certain cases, although commitment irregular.
3747. After discharge the party must not be arrested, &c., except in certain cases.

Who entitled to writ.

§ 3708. Any person imprisoned or restrained of his liberty within this state, for any criminal or supposed criminal matter, or under any pretence whatsoever, except in cases specified in the next section, may prosecute a writ of habeas corpus according to the provisions of this chapter, to inquire into the cause of such imprisonment and restraint.

Persons not entitled.

§ 3709. Persons committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such judges or courts have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts, are not entitled to the benefit of this writ.

Applications for; how made and to whom.

§ 3710. Applications for the writ must be made by petition, signed either by the party for whose benefit it is intended, or some person on his behalf, and must be addressed:

1. Where such party is confined or restrained in any other place than the jail or penitentiary, and on any other than a criminal charge, to a justice of the peace, or the judge of probate of the county in which such party is restrained or confined, or to a chancellor or judge of the circuit court.

2. Where a person is confined in the county jail, or any other place, on any other than a charge of or commitment for felony, or on a sentence or decree of the supreme court, court of chancery, or circuit court, to the judge of probate of the county in which such person is imprisoned or restrained.

3. Where a party is confined in the county jail or penitentiary, on any charge whatever, to a chancellor, or judge of the circuit court.

Made to the nearest chancellor or judge.

§ 3711. When made to a chancellor, or judge of the circuit court, the application must be made to the chancellor, or judge residing or being nearest to the place or county where the party is restrained or confined.

When not so made what proof required.

§ 3712. When the application is made to a chancellor or judge of the circuit court not residing or being nearest to the place or county where the party is confined, proof must be made before the same is granted, by the oath of the applicant, or other evidence, that the chancellor or circuit judge residing nearest thereto is absent, or that being nearest thereto, has refused to grant the writ, or for some other cause specially set forth is incapable of acting; and if such proof is not made, the application must be denied.

What the application must state.

§ 3713. The application must state in substance:

1. That the party on whose behalf the writ applied for is imprisoned or restrained of his liberty, and the officer or person by whom, naming him if known, or describing him if not known.

2. The place where the party is imprisoned or restrained, and if the place cannot be stated with precision, from being unknown, it is sufficient to state the county in which such party is imprisoned or restrained.

3. The cause or pretence of such imprisonment or restraint, according to the fact, to the best of the knowledge and belief of the applicant.

4. If the imprisonment is by virtue of any warrant, writ, or other process, a copy thereof must be annexed, or it must be alleged that a copy has been demanded and refused, or that for some sufficient cause a demand of such copy could not be made.

How verified

5. It must be verified by the oath of the applicant, to the effect that he believes it true.

How granted and made returnable.

§ 3714. The justice, judge, or chancellor authorized to grant the writ, to whom the application is made, must grant the same without delay, unless it appear from the application itself, or from the documents annexed, that the person for whose benefit the writ is intended is not, under the provisions of this chapter, entitled to the benefit of the same; and when granted by a justice of the peace, under the provisions of the first subdivision of section 3710, it must be made returnable before the judge of probate of the county, or the circuit judge or chancellor residing or being nearest to the place of such imprisonment or restraint; in other cases it must be made returnable before the officer granting the

same, except where the party is confined in the penitentiary, in which case it must be made returnable before the circuit court of Coosa county.

Form of habeas corpus.

§ 3715. The writ may be in substance as follows:

The State of Alabama, }
County. } To the sheriff of —— county, (or to the jailor of —— county, or to the person imprisoning or restraining the party, as the case may be:) You are hereby commanded to have the body of C. D., alleged to be detained by you, by whatsoever name the said C. D. is called or charged, with the cause of such detention, before A. B., judge of the circuit court, (or chancellor, or judge of probate of —— county, or the circuit court of Coosa county, as the case may be,) on &c., at &c., (or immediately after the receipt of this writ, as the case may be,) to do and receive what shall then and there be considered concerning the said C. D.

Dated this —— day of ——, 185 .

Signed, A. B. (name of officer.)

If name of party uncertain.

§ 3716. If the name of the person directed to be produced is uncertain, he may be described in any other way so as to designate the person intended.

Writ not to be disobeyed for want of form, &c.

§ 3717. The writ must not be disobeyed for the want of form, and is sufficient if the person having the custody of the party imprisoned or restrained be designated by his name of office, if he have any, if not, by his own name; or if both such names are unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ is to be deemed the person to whom it was directed, although it may be directed to him by a wrong name or description, or to another person.

Precept to take the body of the party.

§ 3718. The officer by whom the writ is issued may also, at the same time or afterwards, at any time before the hearing, on a proper showing by the applicant, issue a precept, directed to any sheriff or constable of the state, commanding him to have the party for whose benefit the writ is issued before him at such time and place as he may direct, or before the circuit court of Coosa county, if imprisoned in the penitentiary, which precept must, if practicable, be executed according to its command, by any sheriff, deputy sheriff, or constable, into whose hands the same may come.

How proceeded with when party produced on such precept

§ 3719. Upon such person being brought before the officer issuing the writ, or before the circuit court of Coosa county, he must be discharged, bailed, or remanded, as if he had been produced upon the return of the writ.

Notice to be given to person interested or attorney.

§ 3720. If it appears from the petition, that the party is detained on any process, under which any other person has an interest in continuing his imprisonment or restraint, the officer issuing the writ must indorse on the same an order, requiring the applicant, or some one for him, to give notice to such person or his attorney of the issue of the writ, and of the time and place when and where the same is returna-

ble; and such party must not be discharged unless sufficient notice has been given to such person or his attorney, if within fifty miles of the place of examination, to appear and object to such discharge, if he think proper.

To solicitor and prosecutor.

§ 3721. If it appears from the petition that the party is imprisoned, or confined, on any criminal accusation, the officer issuing the writ must indorse on the same, an order requiring such party, or some one for him, to give notice to the solicitor of the time and place when and where such writ is returnable; and also to the prosecutor or principal agent in procuring the arrest; and such party must not be discharged until such notice has been given a sufficient length of time, if the solicitor, prosecutor, or such agent, is within fifty miles of the place of examination.

Witnesses to be subpœnaed; and by whom.

§ 3722. If the writ is issued by a judge of probate, or justice of the peace, it is the duty of such officer, or of any justice of the county in which the witness resides, at any time before the hearing, on application of either party, to issue subpœnas for witnesses to appear at the return of such writ, at the place of examination; and if the writ is issued by a chancellor, or circuit judge, such subpœnas must be issued by the clerk of the circuit court of the county in which the writ is made returnable; or the clerk of the circuit court, or any justice of the county in which the witness resides.

To whom directed.

§ 3723. Such subpœnas must be directed to the sheriff, or any constable of the county in which the witness resides.

By what officers habeas corpus served.

§ 3724. Every writ of habeas corpus issued under the provisions of this chapter, may be served by any sheriff, deputy sheriff, or constable, of the same, or of any other county.

Mode of service.

§ 3725. Such writ must be served by delivering a copy of the same, and showing, when demanded, the original to the person to whom it is directed; and if he cannot be found, it may be served by being left at the jail, or other place in which the party is confined, with any officer, or other person of full age, having charge for the time being of such party.

In case of concealment, &c.

§ 3726. If the person to whom the writ is directed conceal himself, or refuse admittance to the officer, it may be served by appending a copy on some conspicuous place, on the outside either of the dwelling house or the place where the party is imprisoned or restrained.

Return; at what time made.

§ 3727. Any person to whom the writ is directed after due service being made, must make his return at the day designated therein, if it be practicable so to do; but if no day is appointed in the writ, the same must be made within two days after service, if the place to which the return is to be made does not exceed thirty miles from the place of the detention of the party; if more than thirty, and less than one hundred miles, the return must be made within five days; and if over one hundred miles, in eight days.

What the return must state.

§ 3728. The person on whom service is made, must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody or power, or under his restraint.

2. If he has the party in his custody or power, or under his restraint, the authority, and the cause thereof, setting out the same fully.

3. If the party is detained under a writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original must be produced and exhibited, on the return of the writ to the court, judge, or chancellor, to whom the same is returnable.

4. If the person on whom the writ has been served has had the party in his custody or power, or under his restraint, at any time before or after the date of the writ, but has transferred such custody or restraint to another, the return must state explicitly to whom, at what time, for what cause, and by what authority, such transfer was made.

To be signed and sworn to.

§ 3729. The return must be signed by the person making it, and verified by his oath; unless he is a sworn public officer, and makes the return in his official capacity.

Party to be produced or excuse made.

§ 3730. At the time of making the return, the person or officer on whom the same has been served, must also produce the person in his custody or power, or under his restraint, according to the command of the writ, unless in the case of the sickness or infirmity of the party, as provided for in the next section.

When party is sick or infirm.

§ 3731. Whenever, from the sickness or infirmity of the party, he cannot without danger be produced, that fact must be stated in the return; and in all cases verified by oath; and must, if required, be established by other evidence: if satisfied of such fact, and the return is in other respects sufficient, the court, chancellor, or judge, may proceed to decide on the return, as if the party had been produced; or may, if necessary, proceed to the jail, or other place where such party is detained, and there make the examination; or may adjourn the same to another time.

Petition may be denied and issue how tried.

§ 3732. The party imprisoned or restrained may deny any of the facts stated in the return, and may allege other facts which may be material in the case; and the court, chancellor, or judge, may in a summary way examine into the cause of the imprisonment or restraint, and hear the evidence produced, and dispose of the party as the rules of law require; and if no legal cause for the imprisonment or restraint be shown, he must discharge the party therefrom.

Examination adjourned.

§ 3733. The court, judge, or chancellor, may adjourn the examination from time to time, as in his opinion the correct administration of the law requires.

Until judgment on examination party remanded, committed or bailed.

§ 3734. Until judgment is given on the examination, the court or magistrate may remand the party, or may commit him to the custody of the sheriff of the county, or continue or place him under such other custody as his age may render necessary, or the circumstances of the case may require; or if the charge be of a character to authorize it, may take bail from him in a sufficient amount, to appear from day to day.

§ 3735. If the party fail to appear, an entry of forfeiture

must be indorsed on the undertaking, signed by the judge or chancellor, and returned to the circuit court of the county in which the examination is had; and the same proceedings may be had in such court, on such undertaking, as if it had been forfeited therein; the indorsement of forfeiture being presumptive evidence of such fact.

If party bailed fail to appear, forfeiture.

§ 3736. When the party is charged with a bailable offence, he must be admitted to bail, if sufficient bail is offered; and if not, the court, judge, or chancellor, must indorse on the warrant the amount of bail required, and the court before which the party is to appear.

Party on hearing bailed or committed.

§ 3737. If the party is committed in any civil action for want of bail, and it appears that the sum is excessive and unreasonable, the judge or chancellor must decide what bail is reasonable, and on giving the same, the party must be discharged.

When party is committed for want of bail.

§ 3738. The sheriff of the county in which the party is detained, may discharge the party on his giving sufficient bail in the amount required by the court, judge or chancellor.

May be discharged on giving the bail required

§ 3739. The undertaking of bail taken before any judge or chancellor, or sheriff, for the appearance of a prisoner under the provisions of this chapter, must be transmitted by him to the clerk of the court before which the prisoner is bound to appear, by the first day of such court; and may be forfeited as other bail in criminal cases.

Undertaking; to whom and when returned.

§ 3740. The party must be remanded if it appear that he is detained in custody:

Certain cases in which the party must be remanded

1. By virtue of process issued by a court, or judge of the United States, in a case where such court or judge has exclusive jurisdiction.

3. Where the time during which such party may be legally detained has not expired.

3. In every case in which the detention is authorized by law.

§ 3741. No court, chancellor or judge, on the return of a writ of habeas corpus, has authority to inquire into the legality or justice of any order, judgment, decree or process of any court legally constituted, or into the justice or propriety of any commitment for contempt made by a court, officer, or body, according to law, and charged in such commitment.

What may not be inquired into on the return

§ 3742. No person must be discharged under the provisions of this chapter, who is in custody, or held by virtue of any legal engagement or enlistment in the army or navy of the United States; or who being subject to the rules and articles of war, is confined by any one legally acting by authority thereof; or who is in custody for treason, felony, or other crime or misdemeanor, committed in any other state or territory; and who, by the constitution and laws of the United States, should be delivered up to the authority of such state or territory.

United States soldiers and sailors not discharged; or in custody for crimes committed in another state who should be delivered up.

§ 3743. No negro held as a slave in this state, or lawfully held as a fugitive from service from another state or terri-

Question of slavery not to be tried on

habeas corpus.

tory, must be discharged, nor his right to freedom be determined, under the provisions of this chapter.

Cases when imprisoned under judicial process in which he must be discharged.

§ 3744. If it appears that the party is in custody by virtue of process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such party can only be discharged in one of the following cases:

1. When the jurisdiction of such court has been exceeded either as to matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet by some subsequent act, omission or event, the party has become entitled to his discharge.

3. Where the process is defective in some matter or substance required by law, rendering such process void.

4. Where the process, though in proper form, has been issued in a case, or under circumstances not allowed by law.

5. Where the person having the custody of the prisoner under such order or process, is not the person authorized by law to detain him.

6. Where the process is not authorized by any judgment, order or decree, or by any provision of law.

May be bailed.

§ 3745. But the court, judge or chancellor, may in all cases previous to a trial and conviction, on a hearing upon a writ of habeas corpus, admit the party to bail in bailable cases.

When commitment is irregular.

§ 3746. If it appear that the party has been legally committed for a criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, he may be remanded to the custody, or placed under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto; and if not so entitled, he must be committed to the custody of the proper officer or person.

After discharge not to be arrested.

§ 3747. No person who has been discharged upon a habeas corpus, can be again imprisoned, restrained, or kept in custody for the same cause, unless he is indicted therefor; or after a discharge for defect of proof, is again arrested on sufficient proof, and committed by legal process for the same offence.

Penalty.

§ 3748. Any sheriff, other officer, or person having the custody of a party produced on habeas corpus, who detains him after an order of the court, judge or chancellor, for his discharge or enlargement, or who afterwards arrests him without a legal and proper cause, warrant or other precept, must, on conviction, be fined not less than fifty or more than five hundred dollars, and is also responsible in a civil action for any damages such party may have sustained.

Penalty for failure to deliver copy of warrant, &c.

§ 3749. Any officer who refuses or neglects for six hours, to deliver a true copy of the order, writ, warrant, or process, by which he detains any prisoner, either to such prisoner or to any person who in his behalf applies for the same, forfeits to the prisoner the sum of two hundred dollars, and is also

guilty of a misdemeanor, and, on conviction, must be fined not less than fifty or more than five hundred dollars.

Not more than two copies to be delivered.

§ 3750. Under the provisions of the preceding section, no officer is required to deliver more than two copies of such warrant, writ, order or process.

Penalty for refusing to receive or obey writ.

§ 3751. Any person to whom a writ of habeas corpus is directed, who refuses to receive the same, or neglects to obey and execute it according to the provisions of this chapter, unless sufficient excuse is shown for such refusal or neglect, the court, judge or chancellor, before whom the writ is returnable, must forthwith proceed by process of attachment, as for contempt, to compel obedience to the writ, and punish the person guilty of such contempt; and such person is also guilty of a misdemeanor, and, on conviction, must be fined not less than fifty or more than five hundred dollars; and is also responsible in damages to the party aggrieved.

To whom attachment directed.

§ 3752. If such attachment is issued against the sheriff or his deputy, it may be directed to the coroner or constable, who is authorized to execute the same.

Changing custody of party to elude service of habeas corpus.

§ 3753. Every one who has in his custody or under his power, any person entitled to a writ of habeas corpus, who either before or after the issue of such writ, with the intent to elude the service or effect thereof, transfers such person to the custody, or places him under the power or control of any other person, or conceals him, or changes his place of confinement, forfeits to the person aggrieved the sum of five hundred dollars, and is also guilty of a misdemeanor, and, on conviction, must be fined not less than fifty or more than five hundred dollars, and may be imprisoned not exceeding twelve months.

Penalty.

Witnesses failing to attend.

§ 3754. On the failure of any witness summoned under the provisions of this chapter to attend, the judge or chancellor must indorse such failure on the back of the subpœna, and deliver it to the clerk of the circuit court of the county in which the examination was had; and the circuit court must take such proceedings thereon as if the witness had been a defaulter in such court; the indorsement of such failure being presumptive evidence of the fact.

How attendance proved and taxed.

§ 3755. The witness may prove his attendance as in other cases before the judge or chancellor, and may have the same taxed in the bill of costs, where the party is detained, on charge of a criminal offence, and afterwards convicted of the same.

Costs; on whom imposed.

§ 3756. In other cases, the court, judge or chancellor, may impose the costs, or any portion thereof, on either party; and if the writ is returnable before a chancellor or judge of the circuit court, the clerk of the circuit court of the county in which the writ is returnable must tax the costs thereof, and may collect the same by execution.

Fees.

§ 3757. For serving of each writ, the officer serving the same is entitled to one dollar, and five cents a mile, going and returning, to be proved before the judge of probate, or clerk,

by his own oath; the judge of probate, clerk and justice of the peace issuing, and officer serving the subpœnas, to the same fees as in other cases, which must be taxed in the bill of costs in the case provided for by section 3755, and in other cases collected by execution, issued by the judge of probate.

Execution for costs.

§ 3758. In cases where the writ is returnable before the judge of probate, he must tax the costs, and may, except in the case provided for in section 3755, issue execution for the same.

When returnable.

§ 3759. Any execution for costs issued under the last three sections, except upon the conviction of a criminal offence, may be made returnable at any day, not less than one or more than three months from the date of the issue.

Guards.

§ 3760. The sheriff, or other person having charge of a prisoner, directed to be brought on a habeas corpus, when the charge is for a criminal offence, may summon a sufficient guard to aid him in conveying such prisoner before the court, judge or chancellor, before whom the writ is returnable, and reconveying him back if he is not discharged.

Penalty on guard for failing to attend.

§ 3761. Any person summoned as a guard, is for disobedience subject to the same penalty as persons who are summoned and refuse to aid the sheriff in conveying convicts to the penitentiary.

Compensation to sheriff and guards.

§ 3762. The sheriff and guard are entitled to the same compensation allowed for conveying convicts to the penitentiary, to be paid in the same manner.

Title 3.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

CHAP. 1. Of the coroner's inquest and proceedings thereon.
" 2. Of search warrants.
" 3. Vagrants.
" 4. Proceedings in case of bastardy,
" 5. Absconding felons.
" 6. Fugitives from justice from other states.

CHAPTER I.

OF THE CORONER'S INQUEST AND PROCEEDINGS THEREON.

SEC.
3763. Jury of inquest summoned if suspicious death has occurred.
3764. Jurors to be sworn, five required to find a verdict.
3765. Coroner may subpœna witnesses and call in a physician to advise professionally.
3766. Sheriff to serve subpœnas and coroner to return defaulters to court.
SEC.
3767. Witness refusing to answer, held to bail to next court or imprisoned; fined if convicted.
3768. Jury to find a verdict and make an inquisition.
3769. Inquisition to be returned to court and witnesses recognized to appear.
3770. Party implicated in the death to

SEC.
be arrested by warrant and examined by coroner.
3771. Money found on the person of the deceased, paid to county treasurer unless claimed by representative. Penalty.
3772. Placed to account of the county.
3773. Paid to representative if claimed in six years.

Jury of inquest summoned by coroner.

§ 3763. When a coroner has been informed that a person has been killed or suddenly died under such circumstances as to afford a reasonable ground for belief that his death has been occasioned by the act of another by unlawful means, he must forthwith summon a jury of six discreet householders of the county, to appear before him forthwith at a specified place, to inquire into the cause of the death.

Jurors to be sworn; five required to render a verdict.

§ 3764. When five or more of the jurors appear, they must be sworn to inquire who the person was, and when, where and by what means he came to his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

Coroner may subpœna witnesses and call in a physician.

§ 3765. The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint; he must summon and examine as a witness any person who, in his opinion or that of any of the jury, has any knowledge of the facts; and he may also summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body and give a professional opinion as to the cause of the death.

Sheriff to serve the subpœnas.

§ 3766. The sheriff or any constable must serve the subpœnas, or they may be served by the coroner, and if any witness being subpœned, fails to attend, the coroner must indorse on the subpœna his default, sign his name thereto, and return the same to the clerk of the circuit court of the county, within five days thereafter; and such witness must be proceeded against in such court, in the name of the state, as if he was a defaulter therein; the indorsement of the coroner being presumptive evidence of the default.

Defaulting witnesses.

Witness refusing to answer.

§ 3767. Any witness who refuses to answer any question in relation to the cause of such death, except on the ground that it may criminate himself, is guilty of a misdemeanor, and must be committed to jail by the coroner, unless he gives bail, in the sum of five hundred dollars, to appear at the circuit court and answer such offence; and on conviction thereof must be fined, not less than two hundred or more than five hundred dollars; and may be imprisoned not exceeding three months.

Verdict of the jury and inquisition in writing.

§ 3768. After inspecting the body and hearing the testimony, the jury must render their verdict, and certify it by an inquisition in writing, signed by them, setting forth who the person is, and when, where, and by what means he came to his death; and if his death was occasioned by the act of another by unlawful means, who is guilty thereof; and if the person, means or manner of his death, or the person by whose act he came to his death, are unknown, the inquisition must so state.

Inquisition returned and witnesses recognized.

§ 3769. The inquisition thus taken, must be returned by the coroner forthwith, to the clerk of the circuit court of the county; and he must also require all material witnesses to enter into an undertaking to appear at the circuit court, if in session, or if not, to the next circuit court, and may require security to such undertaking: and on the failure of the witness to enter therein, may commit him until he enters into the same.

Party implicated by the verdict arrested under coroner's warrant, and committed or discharged.

§ 3770. If the jury find that the deceased came to his death by the act of another by unlawful means, the coroner may issue a warrant of arrest for such person, which may be executed according to the provisions of Chapter third, of the preceding Title, and the person when arrested, brought before a magistrate of the county in which the inquest was held, who must proceed to examine the charge, and commit, bail or discharge the defendant, as upon a warrant of arrest, under the provisions of such chapter.

Money on the person of the deceased to be paid to county treasurer.

Penalty.

§ 3771. The coroner must, within thirty days after an inquest on a dead body, deliver to the county treasurer any money or other property which may be found on the body, unless claimed in the mean time by the legal representatives of the deceased; if he fail to do so, the treasurer may proceed against him for the amount or value thereof, on ten days' notice to him and his securities, or against any of them served therewith; and recover the same with twenty per cent. damages on the amount or value of the same.

How disposed of.

§ 3772. Upon the receipt of the money by the treasurer, he must place it to the credit of the county. If it be other property, he must, within three months, sell it at the court house of the county, at public auction, upon reasonable public notice; and must in like manner place the proceeds to the credit of the county.

Paid to representatives on claim.

§ 3773. If the money in the treasury be demanded in six years by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees of the coroner, expenses of sale, and five per cent. on the balance for the treasurer; or it may be paid at any time thereafter, upon the order of the county commissioners.

CHAPTER II.

OF SEARCH WARRANTS.

SEC.
3774. Search warrant, an order to search for and bring personal property before the magistrate.
3775. Issued to take stolen goods or the instrument of a felony, or property to be used to commit an offence.
3776. Only issued on affidavit showing probable cause.
3777. Complainant and his witness examined, and their depositions to be reduced to writing.
3778. Depositions to set forth the facts.
3779. If magistrate think the proof sufficient, warrant issued.
3780. Form of warrant.
3781. Warrant to be executed by an officer; he may have assistance.
3782. He may break open doors, &c.
3783. May be executed in the day time; exception.
3784. To be executed and returned in ten days.
3785. Officer gives receipt for property taken.

SEC.
3786. Property seized delivered to owner is retained for the use of the court having jurisdiction.
3787. Warrant returned to magistrate, and complainant and defendant to have copies of the return.
3788. If grounds of issue contested, testimony to be reduced to writing and authenticated.
3789. Property seized by mistake, restored.
3790. Papers, &c., returned to court having jurisdiction of the offence.
3791. Fees paid for warrant and execution before it issues, and complainant pays all costs if he sues out warrant without probable cause.
3792. Misdemeanor to sue out warrant maliciously, &c.
3793. Prisoner may be searched before the magistrate on a charge of felony.

Search warrant defined.

§ 3774. A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to any sheriff or constable, commanding him to search for personal property and bring it before the magistrate.

Grounds of issue.

§ 3775. It may be issued on either of the following grounds:

1. Where the property was stolen or embezzled; in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offence, or of any other person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as a means of committing an indictable offence, or in the possession of another to whom he may have delivered it, for the purpose of concealing it, or preventing its being discovered; in which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

Only issued on affidavit.

§ 3776. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the

Contents of the affidavit.

person, and particularly describing the property and the place to be searched.

Complainant and his witnesses examined on oath in writing.

§ 3777. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the persons making them.

Contents of the depositions.

§ 3778. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

If grounds sworn to are sufficient the warrant issues.

§ 3779. If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable grounds to believe their existence, he must issue a search warrant signed by him, directed according to the provisions of section 3774, commanding the officer forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

Form of warrant.

§ 3780. The warrant may be substantially in the following form:

The State of Alabama, }
County. } To the sheriff, or any constable of such county: Proof by affidavit having this day been made before me by A. B. (the complainant) that (stating the particular grounds of the application according to section 3775; or if the affidavits are not positive, "that there is probable grounds for believing that," stating the ground of the application in the same manner), you are therefore hereby commanded, in the day time, (or "at any other time of the day or night," as the case may be, according to section 3783), to make immediate search on the person of C. D., (or "in the house of E. F.," or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be) for the following property, (describing it with reasonable particularity) and if you find the same, or any part thereof, to bring it forthwith before me at (stating the place).

Dated the —— day of ——, 1852.

L. M.,
Justice of the Peace of said county.

Officer to execute the warrant.

§ 3781. A search warrant may be served by the officers to whom it is directed, but by no other, except in aid of the officer, on his requiring it, he being present and acting in its execution.

Doors may be broken open.

§ 3782. The officer may break open an outer door or window of a house, or any part of a house, or any thing therein, to execute the warrant, if after notice of his authority and purpose he is refused admittance.

Executed in the day time.

Exception.

§ 3783. The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits are positive that the property is on the person, or in the place to be searched; in which case he may insert a direction that it be searched at any time in the day or night.

§ 3784. A search warrant must be executed and returned

to the magistrate who issued it, within ten days after its date, and after that time, unless executed, is void. Returned in ten days.

§ 3785. When an officer takes property under the warrant, he must, if required, give a receipt to the person from whom it was taken, or in whose possession it was found. Receipt for property taken.

§ 3786. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, cause it to be delivered to the owner, on satisfactory proof of his title, and his paying all fees. If it was taken on a warrant, issued on the grounds stated in the second and third subdivisions of section 3775, he must retain it in possession, subject to the order of the court to which he is required to return the proceedings before, or of any other court in which the offence in respect to which the property was taken, is triable. Property so taken delivered to the owner.

§ 3787. The officer must return the warrant to the magistrate, specifying in his return with particularity the property taken; and the applicant for the warrant, and the person from whose possession the property was taken, are entitled to a copy of the return, signed by the magistrate. Returned to the magistrate who issued it.

§ 3788. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to hear the testimony, which must be reduced to writing, and authenticated, in the manner prescribed in section 3777. Contest when grounds of issue are controverted.

§ 3789. If it appear that the property is not the same as that described in the warranty, or that there is no probable cause for believing the existence of the grounds on which the warrant issued, the magistrate must direct it to be restored to the person from whom it was taken. Property restored, if not the same described in the warrant.

§ 3790. The magistrate must, if the property is not directed to be restored under the provisions of the preceding section, annex together the search warrant, the return, and the depositions, and return them to the circuit court having power to inquire into the offence in respect to which the search warrant was issued. Papers returned to the court having jurisdiction.

§ 3791. The complainant must pay the fees of the warrant before he is entitled to the same, and must also pay the officer his fees for the execution, before the same is executed, and if on the hearing it appear that there was no probable cause for believing the existence of the grounds on which the warrant was issued, the whole costs may be taxed against the complainant, and an execution issued therefor, returnable on any day the magistrate may direct. Fees paid before issue of the warrant and costs taxed against complainant if no probable cause shown.

§ 3792. A person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor. Maliciously suing out warrant.

§ 3793. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or any things which may be used as evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and such weapon or other thing to be retained, subject to the order of the court in which the defendant may be tried. Prisoner before magistrate may be searched for evidence of felony.

CHAPTER III.

VAGRANTS.

Sec.		Sec.	
3794.	Definition of the word vagrant.	3797.	Imprisoned twenty days for second offence.
3795.	Arrested on justice's warrant.	3798.	Commitment to show the time of the sentence.
3796.	Committed to jail, or bound over to good behavior.		

Vagrant defined.

§ 3794. The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment.

2. A person who abandons his wife and family, leaving them without an adequate support, and in danger of becoming a burthen on the public.

3. Keepers of houses of prostitution, and common prostitutes, who have no lawful employment whereby to maintain themselves.

4. Any able bodied person who is found begging.

5. Common gamblers, and persons who go from place to place for the purpose of gaming.

Warrant for arrest of.

§ 3795. When any such person is found, any justice of the county must, upon a complaint made on oath, or on his own knowledge, issue his warrant to the sheriff or any constable, to bring such person before him.

Committed or held to bail.

§ 3796. If, upon an examination, and hearing of the testimony, it appears to the justice that such person is a vagrant, he must commit him to jail for ten days, unless he give security in the sum of two hundred dollars for his good behavior for the term of twelve months; which undertaking or bond must be returned by the justice to the clerk of the circuit court, and the amount thereof is forfeited to the county, if within that time he abandons, or fails without a good excuse, to support his family, or commits any indictable offence.

Imprisoned twenty days for second offence.

§ 3797. If such person is brought before a justice and convicted of vagrancy the second time, and for each subsequent offence, he must be committed to jail for twenty days, and no bond can in such case be taken; and during one half of the time of his confinement, he must be fed on bread and water.

Commitment to state the time of his sentence.

§ 3798. The commitment, in all cases, must direct the confinement of the vagrant for the number of days to which he is sentenced, and until he pays the costs, or is otherwise discharged by law.

CHAPTER IV.

PROCEEDINGS IN CASES OF BASTARDY.

SEC.
3799. Reputed father of bastard arrested on the complaint of the mother.
3800. Held to bond to appear at court and answer.
3801. Justice to return the bond to court.
3802. Reputed father imprisoned on default of bond.
3803. Justice or clerk to issue subpœnas.
3804. Judgment conditional in default of appearance and writ of arrest.
3805. Defendant discharged on bail of one thousand dollars.
3806. On appearance, issue made up for trial.
3807. Either party may be examined.
3808. Bond required to support and educate the child, if defendant found guilty.
3809. Judgment for a sum that will produce an interest sufficient to support the child, on failure to give bond.
SEC.
3810. Execution on the bond on failure to make payments.
3811. Bond may be filed with judge of probate after court.
3812. Defendant discharged on filing bond.
3813. Proceedings when defendant is not found.
3814. Discharged, when so arrested, on giving bond, &c.
3815. Money collected on the bond applied to the support of the child.
3816. Such payment not made after giving bond.
3817. Guardian appointed to receive the child's money, &c.
3818. Bond vacated by the death of the child or marriage of the parents.
3819. Complainant pays costs on verdict for the defendant.
3820. The state and the accused are the parties to the record.
3821. Either party may appeal.
3822. Fees of officers in such cases.

Warrant to take reputed father on complaint of the mother.

§ 3799. When any single woman, pregnant with or delivered of a bastard child, makes complaint on oath to any justice of the county where she is so pregnant or delivered, accusing any one of being the father of such child, such justice must issue a warrant against such person, and cause him to be brought before him.

Bond to appear at court to answer the charge.

§ 3800. He must then, in the presence of the accused, examine the complainant respecting the charge, and if sufficient evidence appears, must require the accused to enter into bond, with sufficient security, in the sum of one thousand dollars, to be approved by such justice, payable to the state of Alabama, and conditioned that the accused will appear at the next term of the circuit court of such county.

Bond returned to court.

§ 3801. Such justice must return such bond and complaint to the clerk of the circuit court, by the first day of the term at which the accused is bound to appear.

Committed in default of bond.

§ 3802. On the failure to give the bond as required, the justice must commit the accused to jail until he gives the same, or is otherwise discharged by law.

Subpœnas for witnesses.

§ 3803. The justice of the peace before the return of the bond, or the clerk of the circuit court after the return, must, on the application of the complainant or the accused, issue subpœnas for witnesses.

Proceedings in default of appearance.

§ 3804. If the accused does not appear, his bond is forfeited, and a conditional judgment may be rendered thereon, and the like proceedings had as in case of the forfeiture of

bonds for indictable offences; and the clerk must issue a writ of arrest, as in criminal cases on indictment found.

Discharged on giving bail in one thousand dollars.

§ 3805. The sheriff, on arresting the defendant on such writ of arrest, may discharge him on his giving bail for his appearance at court in the sum of one thousand dollars, to answer a complaint of bastardy; and if such bond is forfeited, a conditional judgment may be rendered thereon, a writ of arrest issue, and the same proceedings had as often as may be necessary.

Issue made up.

§ 3806. The court, on the appearance of the accused, must, if he demand it, cause an issue to be made up, to ascertain whether he is the real father of the child or not.

Each party examined.

§ 3807. On the trial of such issue, the accuser and accused are each entitled to their oath.

If defendant guilty, bond to support the child required.

§ 3808. On the trial of such issue, if found against the defendant, judgment must be rendered against him for the costs, and he must also be required to enter into bond and security, to be approved by the judge, in the sum of one thousand dollars, payable to the state, and conditioned to pay such sum, not exceeding fifty dollars a year, as the court may prescribe, on the first Monday in January in each year, for ten years, to the judge of probate of the county, for the support and education of the child, which bond must be recorded.

Judgment and proceedings on failure to give bond.

§ 3809. On failure to give such bond, the court must render judgment against the defendant for such sum as at legal interest will produce the amount directed to be paid yearly; and he must also be sentenced to imprisonment for one year, unless in the meantime he execute the bond required, or pay the judgment and costs, and at the end of such time must not be discharged, but kept in jail until he has given such bond or paid such judgment and costs, or is discharged by law as an insolvent debtor.

Execution on failure to make payments.

§ 3810. If such bond is given, on failure to make any of the payments required, to the judge of probate, on the first Monday in January in each year, execution may issue for such amount against all the obligors to the bond, on the application of the judge of probate, which, when collected, must be paid to him.

Bond may be given after court, and filed with judge of probate.

§ 3811. If such bond is not given before the adjournment of court, it may be given at any time before the term of imprisonment expires, and in such case must be approved by the judge of probate, and recorded and filed in the office of the clerk of the circuit court, and execution may issue thereon from time to time, as under the provisions of the preceding section, and the amount, when collected, paid to the judge of probate.

On filing bond and paying costs defendant discharged.

§ 3812. In the case provided for in the preceding section, the defendant must be discharged from imprisonment on payment of the costs, and the judgment against him is discharged.

§ 3813. If the accused does not appear, after the return of

two writs of arrest against him not found by the sheriff of the county in which the court to which the complaint is returned is held, the facts stated in the complaint must be taken as admitted, and judgment rendered against the accused, as provided for by section 3809; and at any time before the payment of such judgment, the defendant may be arrested by a writ of arrest thereon, directed to the sheriff, commanding him to take the defendant and imprison him in jail one year, and afterwards until he is otherwise discharged by law. Proceedings when defendant is not found.

§ 3814. In the case provided for in the preceding section, the defendant can be discharged from imprisonment by the payment of the judgment or executing the bond, in conformity with the provisions of section 3808. How discharged when arrested.

§ 3815. The amount collected on the forfeiture of any bond for the appearance of the defendant, and on the judgment rendered against him, must be paid into the county treasury, and the interest thereof, not exceeding the yearly sum directed to be paid by the court, must be paid to the judge of probate for the support and education of the child. Money received on the bond to be used to support the child

§ 3816. But such payment must not be made after the defendant gives the bond required by section 3808.

§ 3817. The judge of probate must appoint a guardian for such child, and upon his giving bond and security as other guardians, the amount received by the judge of probate must be paid to him. Guardian for the child.

§ 3818. If the child is not born alive, or if, being born alive, it dies, or on the marriage of the mother and the reputed father, on the ascertainment of such facts by the judge of probate, on motion to the circuit court, and proof thereof, an entry of record must be made thereof, and the bond be declared void, the judgment vacated, and the portion of such judgment paid in the county treasury must be paid, on the certificate of the clerk of the circuit court of the vacation of such judgment, to the defendant. Bond vacated by death of the child or marriage of parents.

§ 3819. In case the issue provided for by section 3806 is found against the complainant, judgment for costs must be rendered against her. Costs on verdict for defendant.

§ 3820. The proceedings in bastardy are conducted in the name of the state as plaintiff, and the accused as defendant. Parties on the record.

§ 3821. Either party may appeal to the supreme court within thirty days after judgment. If the appeal is taken by the state, the complainant must give security for the costs of the appeal if the judgment is affirmed; and the defendant also, if the appeal is taken by him, must give the same security, to be approved by the clerk of the circuit court, the names of the securities certified with the record to the appellate court, and execution may issue for the costs of the appeal against them from such court, if the judgment of the circuit court is affirmed. Appeals.

§ 3822. Fees.

Issue of warrant	$ 1 00
Taking examination	50

Fees.

Executing warrant.....$ 0 50
Solicitor's fee on conviction..... 10 00

CHAPTER V.

ABSCONDING FELONS.

SEC. 3823. Governor to offer reward for absconding felon.

Reward for absconding felon.

§ 3823. When any person duly charged with the commission of a capital offence, absconds before being arrested to answer the same, the governor is authorized to offer, by proclamation, a reward of not exceeding four hundred dollars for his apprehension, within five years from the date of such proclamation; and to draw upon the treasury for the amount of such reward, when necessary to be paid.

CHAPTER VI.

FUGITIVES FROM JUSTICE FROM OTHER STATES.

SEC.
3824. Fugitives from other states delivered up when demanded by the executive authority.
3825. Magistrate may issue a warrant for one so charged.
3826. Proceedings same as on examination, &c., for an offence committed here, except that a copy of the record is conclusive evidence.
3827. If charge sustained, party committed to await a requisition, allowing a reasonable time.
3828. Fugitive so arrested, admitted to bail for bailable offences.
3829. Party arrested then discharged, unless a requisition is made.
3830. Jail fees to be paid in advance.
3831. Forfeiture of bond to be returned by magistrate, and judgment entered by the court.
3832. On the expiration of the time, party discharged bound over again.
3833. Person prosecuted or imprisoned here, may be delivered up at the discretion of the governor.
3834. Sheriff, coroner, &c., to execute governor's warrant.
3835. Arrest made in any part of the state, and aid may be called for by the officer.
3836. Officer in executing warrant, is governed by the rules of execution of criminal process.
3837. Jailors to receive and keep the prisoners.

Fugitives from other states delivered up on demand.

§ 3824. Any person charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice, and be found in this state, must, on the demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this state, to be removed to the state or territory having jurisdiction of such crime.

Magistrate may issue warrant for arrest,

§ 3825. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found in this state.

Arrest and commitment.

§ 3826. The proceedings for the arrest and commitment of the person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with an indictable offence, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the state or territory in which he is charged to have committed the offence, must be received as conclusive evidence before the magistrate.

Committed to await requisition of the governor

§ 3827. If from the examination, it appears that the person charged has committed the crime alleged, the magistrate must, by warrant, reciting the accusation, commit him to jail for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive to be made, under the warrant of the executive of this state, on the requisition of the executive authority of the state or territory in which he committed the offence, unless he give bail as provided in the next section, or until he is legally discharged.

Admitted to bail on bailable offences.

§ 3828. The magistrate must, unless the offence with which the fugitive is charged is shown to be an offence punishable capitally by the laws of the state in which it was committed, admit the person arrested to bail by bond or undertaking, with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

Discharged unless so demanded.

§ 3829. The person arrested must be discharged from custody on bail, unless before the expiration of the time designated in the warrant, bond, or undertaking, he be arrested under the warrant of the governor of this state.

Jail fees.

§ 3830. No jailor is bound to receive any person committed under a warrant issued under the provisions of this chapter, until his jail fees for the time specified in such warrant are paid in advance.

Forfeiture of bail bond.

§ 3831. If the fugitive is discharged on bail, and fails to appear or surrender himself according to his bond or undertaking, the magistrate must indorse thereon "forfeited," sign his name thereto, and return it to the clerk of the circuit court by the first day of the next term, and a conditional judgment must be rendered thereon and proceedings had, as in case of bonds or undertakings forfeited in that court; the indorsement of the magistrate being presumptive evidence of the forfeiture.

On expiration of the time discharged or recommitted.

§ 3832. At the expiration of the time specified in the warrant, the magistrate may discharge or recommit him to a further day, or may take bail for his appearance and surrender, as provided in section 3828; on his appearance, or if he has been bailed and appear according to the terms of his bond or undertaking, the magistrate may either discharge him therefor, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

Governor may deliver up a prisoner

§ 3833. A person against whom any prosecution has been instituted under the laws of this state, for an indictable offence,

under prosecution here.

may be surrendered or not, at the discretion of the governor, before he has been tried or discharged, or if convicted, punished therefor.

Warrant; to whom directed.

§ 3834. A warrant from the executive may be directed to the sheriff, coroner, or any other person whom he may think fit to entrust with the execution of the same.

When executed.

§ 3835. Such warrant authorizes the officer or person to whom it is directed, to arrest the fugitive at any place within the state, and to require the aid of all sheriffs and constables to whom the same is shown, to aid and assist in the execution thereof.

Authority in executing, and liability.

§ 3836. Every such officer or person has the same authority in arresting the fugitive to command assistance therein, as sheriffs and other officers by law have in the execution of criminal process, directed to them, with the like penalties on those who refuse their assistance.

Jailors to keep him if requested.

§ 3837. The officer or person executing such warrant, may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass; and the keeper of such jail must receive and safely keep the prisoner, until the person having charge of him is ready to proceed on his route; such person being chargable with the expenses of keeping.

Title 4.

JAILS AND THE PENITENTIARY.

CHAP. 1. Jails, jailors and prisoners.
" 2. The penitentiary.

CHAPTER I.

JAILS, JAILORS AND PRISONERS.

SEC.
3838. Who to be imprisoned in the county jail.
3839. Sheriff is the jailor and may appoint a deputy, for whom he is responsible.
3840. Separate apartments for males and females.
3841. Orders of commitment to be filed and kept by the jailor.
3842. Jails, prisoners and orders of commitment to be delivered to successor on vacating office.
3843. Failure to do so indictable; fine.
3844. Prisoners supported by the jailor, or supply themselves.
3845. Jailor not to furnish liquors, &c. Penalty.
3846. Convict to pay his jail fees.
3847. Additional clothing supplied by the jailor at the expense of the county.
3848. Guard for jail employed when necessary.
3849. Prisoner to be committed to nearest secure jail.
3850. Prisoners removed by order of the judge to a secure jail, when county jail insecure.
3851. Prisoner guarded on removal.
3852. Prisoners removed if jail endangered by fire.
3853. Prisoner whose health is being injured removed on warrant from the circuit or probate judge.
3854. Prisoner to be guarded in such cases.
3855. These provisions to apply to United States prisoners.

SEC.
3856. Escapes of such prisoners. Penalty.
3857. Sheriff to furnish the circuit court with a list of prisoners in custody.
3858. Fees paid by plaintiff for prisoner under civil process.
SEC.
3859. Jailor to receive and keep United States prisoners.
3860. Same penalties for their escape as in other cases.
3861. Marshal to pay the jail fees.
3862. Jailor to supply slaves with blankets.

Prison; for what persons

§ 3838. The county jail is used as a prison:

1. For the safe keeping of persons committed for trial on indictable offences.

2. For the confinement of persons sentenced to imprisonment therein, upon conviction for offences punishable by imprisonment in the county jail.

3. For the safe keeping of persons sentenced to imprisonment in the penitentiary, until their removal thereto.

4. For the confinement of persons committed on contempt, or on civil process.

5. For the safe keeping of persons committed in default of security to appear as witness, in a criminal case.

6. For the safe keeping or confinement of any person charged or convicted of a criminal offence against the United States.

7. For the safe keeping or confinement of persons committed in any other case, under the authority of law.

Sheriff is the jailor.

§ 3839. The sheriff of the county has, except in cases otherwise provided by law, the custody and charge of the jail in his county, and of all prisoners committed thereto, and may appoint a jailor, for whose acts he is civilly responsible.

Males and females kept apart.

§ 3840. Male and female prisoners, except husband and wife, must not be kept in the same room.

Warrants, &c., to be filed and kept.

§ 3841. The order or process by which any prisoner is committed to or discharged from jail, or an attested copy thereof, must be regularly filed in its order, and safely kept by the sheriff or jailor, under his direction.

Jail, prisoners, orders of commitment, &c., delivered to successor.

§ 3842. Upon the resignation, death, removal from office or expiration of the term of office, of any sheriff, or coroner acting as sheriff, such order or process, the jail and the prisoners therein, with every thing belonging or pertaining thereto, must be delivered over to the successor of such sheriff or coroner, or any person duly authorized by law to take charge of said jail.

Failure to do so indictable.

§ 3843. A failure to comply with the provisions of the preceding section, after demand made by the person entitled to the charge of such jail, by any person having such order or process, or in charge of the jail, is a misdemeanor, punishable, on conviction, by a fine not less than three hundred dollars.

Support of prisoners furnished by themselves or by the jailor.

§ 3844. Every person committed to jail, may furnish his own support, under such precautions as the jailor may see proper to adopt to guard against escapes; and if such support is not furnished by the prisoner, it must be by the jailor.

Furnishing

§ 3845. No person confined in jail must, on any pretext,

liquors, &c., to prisoners.

other than the written order of a physician, to the effect that it is necessary for the health of such prisoner, be furnished, or allowed to receive, spirituous or vinous liquors; and if any prisoner in jail receives or is furnished with such liquor, with the knowledge of the jailor, it is a midemeanor, punishable, on conviction, by a fine of not less than one hundred dollars.

Fine.

Jail fees.

§ 3846. Every person committed to jail on the charge of a criminal offence, if convicted, or on conviction of a criminal offence, must, if able, pay the fees for his support; and after conviction must not be discharged from imprisonment, until the same are paid, or he is otherwise legally discharged; and every jailor discharging a prisoner, in such case, without lawful authority, is guilty of an escape, and forfeits all right to the payment of his fees by the state.

Additional clothing, &c., furnished by jailor.

§ 3847. If from any cause additional clothing or bedding is required, and the prisoner is unable to furnish it, it must be supplied by the jailor at the expense of the county.

Guard for jail when necessary.

§ 3848. The sheriff has authority when the jail is insufficient, and there is reason to apprehend an escape, to call out such guards as may be necessary, to be paid, on the certificate of the sheriff, one dollar and fifty cents for each day's service, out of the county treasury.

If county jail insecure prisoner committed to nearest safe jail.

§. 3849. In all criminal cases, either before or after conviction, or in cases of contempt, if it be shown to the committing magistrate, judge or court, that the jail of the county to which the commitment should be made is insufficient for the safe keeping of the prisoner, the commitment in such case must be to the nearest sufficient jail, and should be stated in the warrant; or an indorsement to that effect made thereon and signed by the magistrate; or if by a court of record, entered on the minutes thereof, and the jailor of the county is in such case bound to receive and detain the prisoner, on such commitment, or a certified copy of such order.

Removal of prisoners to nearest sufficient jail.

§ 3850. If the jail of any county is destroyed or becomes insufficient, any circuit judge or judge of probate of the county may, on the application of the sheriff, and proof thereof, direct the removal of any prisoner to the nearest sufficient jail, indorsing on the order or process by which any person is imprisoned, to the effect, "that proof having been made that the jail of the county in which the prisoner was confined was insufficient to keep him safely," (or "is destroyed," as the case may be,) "and for that reason he has ordered his removal to the jail of —— county;" which indorsement must be signed and dated by such judge.

Guards in removing a prisoner.

§ 3851. Guards may be summoned by any officer in charge of a prisoner, when necessaay to remove him from one county to another, in case of the insufficiency of the jail, removal of the trial, or any other cause; and the sheriff is entitled to two dollars and fifty cents, his tolls and ferriages, and each guard two dollars, his tolls and ferriages, for each day's service, to be paid by the county, if the expense was occasioned

by there being no jail, or an insufficient one therein, otherwise by state.

Prisoners removed if jail in danger from fire.

§ 3852. When a county jail, or a building contiguous thereto, is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the sheriff or jailor may remove them to a safe and convenient place, and there confine them so long as it is necessary to avoid the danger.

Prisoner removed to a proper place whose health is fast sinking.

§ 3853. When it is made clearly to appear to a judge of the circuit court, or judge of probate of the county, that the life of a prisoner confined in the county jail is endangered, or that his health will be seriously affected by remaining therein, such judge must, by an order in writing, direct the sheriff or jailor to remove such prisoner to some suitable place as near as may be to the jail, and safely keep him there until his health is sufficiently restored to authorize his re-commitment.

Guard for such prisoner

§ 3854. To ensure the safe keeping of such prisoner, the sheriff or jailor must summon a sufficient guard to aid him, who are entitled to one dollar and twenty-five cents for each day's service, to be paid by the state.

Not to apply to United States prisoners.

§ 3855. The provisions of the two preceding sections do not apply to prisoners confined in jail under process from any court of the United States.

Escape of such prisoners. Penalty.

§ 3856. If the sheriff or jailor negligently or voluntarily suffer any prisoner to escape, during the time he is thus removed from the jail, he is guilty of an escape, as if such prisoner had escaped from jail; and in case such prisoner is not, as soon as his health is sufficiently restored to render it prudent, re-committed to jail by the sheriff or jailor, he is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty or more than five hundred dollars.

Sheriff to give the judge a list of prisoners.

§ 3857. It is the duty of the sheriff, on the first day of each circuit court, to certify to the judge thereof the names of the prisoners in the jail of his county for any charge or offence.

Fees when prisoner is in civil process.

§ 3858. Whenever any prisoner is committed to jail on any civil process, his fees for victualling the prisoner must be paid weekly; and on failure so to do, the jailor may discharge him, but in such case he is not exonerated from the debt.

United States prisoners to be received and kept.

§ 3859. The sheriff or jailor must, if the jail of his county is sufficient, receive into his custody all persons committed under any criminal charge or offence against the United States, and must safely keep any such prisoner according to the warrant or process of commitment, until he is duly discharged by law.

Penalties for their escape.

§ 3860. The justice is subject to the same penalties for the escape of a prisoner received into jail, under the provisions of the preceding section, as in case of a prisoner committed under the authority of this state.

Jailor

Jail fees, &c., of such prisoners.

§ 3861. When any prisoner is committed to jail under the authority of the United States, the marshal must become individually responsible to the jailor for all jail fees, as well as

the fifty cents a month for the use of the jail for each prisoner, according to the provisions of the resolution of the congress of the United States, of twenty-second September, one thousand seven hundred and eighty-nine.

Blankets to be furnished slaves.

§ 3862. Whenever in the opinion of the jailor the necessities of any slave in jail requires, the jailor must furnish him with two good blankets, for which he must be paid by the owner or owners of such slave, before he is released from jail.

CHAPTER II.

THE PENITENTIARY.

ARTICLE 1. Lease of the penitentiary.
" 2. Organization of the penitentiary.
" 3. Powers and duties of officers.
" 4. Removal of prisoners to the penitentiary.
" 5. Police of penitentiary and punishment of escapes.
" 6. Service of process and testimony of convicts.

ARTICLE I.

Lease of penitentiary.

SEC.
3863. Governor to advertise for proposals for lease.
3864. Proposal to state the sum offered and names of the securities.
3865. Advertisement to state last day on which proposals received; highest bidder accepted.
3866. If not a fit person, next on the list accepted.
3867. Governor to select between equal bids.
3868. No proposal requiring any payment to be accepted.
3869. Governor's power of pardoning not impaired.
3870. Lessee to give bond for the rent.
3871. Also for discharge of all his duties.
3872. Bonds recorded in comptroller's office.
3873. Governor may require additional bond, and lease forfeited by refusal to give it.
3874. Lessee evicted on failure to give additional bond.
3875. On failure to give a bond, next bid accepted.
3876. Inventory and appraisement made by inspectors, and the penitentiary and property delivered to lessee.
3877. Lessee the warden of the penitentiary.
3878. His duties as lessee to the convicts.
3879. He is responsible for his agents civilly.
SEC.
3880. Liable for the pay of the inspectors.
3881. On death of lessee, warden and guards temporarily appointed by the inspectors.
3882. They are under the control of the inspectors.
3883. Governor to advertise for sealed proposals for a lease.
3884. Proposals acted on as in the first instance.
3885. Bond required, and inventory of property made as in the former case.
3886. Inspectors' authority lasts till lessee qualifies.
3887. If no lease can be made, warden appointed by the governor.
3888. Other officers governed by the laws in force previous to the year one thousand eight hundred and forty-six.
3889. Warden, as to compensation, &c., governed by same law.
3890. In such cases treasurer of the state pays the expenses of the penitentiary.
3891. Death of lessee terminates the lease and rent.
3892. Lessee responsible for all repairs, and for the property in the inventory, in the condition in which it was received.
3893. Except in case of inevitable accident.

Proposals for leasing advertised for.

§ 3863. Three months before the present lease of the penitentiary expires, and three months before the expiration of each succeeding lease, the governor must advertise in the newspapers published at Montgomery, Mobile, Wetumpka, Tuscaloosa, Huntsville and Eufaula, that sealed proposals will be received for the lease of the penitentiary for six years, to commence on the —— day of ——, designating the day after the day on which the lease of the present and each succeeding lessee will expire.

Contents of proposals.

§ 3864. The proposals must be addressed to the governor at the seat of government, must state the amount proposed to be paid for each year, and must state also the names of the persons whom the applicant will offer as his securities for the payment of the rent, and the faithful performance of his duties according to law.

Contents of the advertisement.

§ 3865. The advertisement required by section 3863, must state a day, not less than twenty or more than thirty days before the expiration of such lease, up to which the proposals must be received; and on that day, or as soon thereafter as may be, the proposals must be opened by the governor, and the proposals of the highest bidder accepted within twenty days thereafter, if in the opinion of the governor he is a fit person to discharge the duties of lessee, and his securities are such as to afford to the state full security for the payment of the rent, and the performance of such duties.

Acceptance of proposal.

Fit person's proposal only accepted.

§ 3866. If the highest bidder is not a fit person to discharge suchduties, or the securities named by him are insufficient, he may accept the proposals of the next highest bidder, and so on.

Selection between equal bids.

§ 3867. Between two or more bids of the same amount, the governor may make the selection.

Proposals not accepted if any payment required.

§ 3868. No proposals must be received which do not offer to take the labor of the convicts as a full consideration for the lease, without any payment to be made by the state.

Convicts may yet be pardoned.

§ 3869. The lease does not impair the power of the governor to pardon convicts, or commute the punishment of any person according to law.

Bond for the rent.

§ 3870. The lessee must give bonds payable to the state of Alabama, with sufficient securities, to be approved by the governor, conditioned for the payment of the rent yearly, which must be paid to the state treasurer.

For performance of duties

§ 3871. In addition to the bonds required by the preceding section, the lessee must also give bond in the sum of twenty-five thousand dollars, payable to the state of Alabama, with securities to be approved by the governor, conditioned for the faithful performance of his duties as such lessee during his term.

Bonds recorded.

§ 3872. The bonds required by the provisions of this chapter must be recorded and kept in the office of the comptroller.

Additional bonds required, and lease forfeited by refusal.

§ 3873. The governor may require additional bonds of the lessee, whenever, in his opinion, the public interest demands; and failing to give such additional bonds within ten days after such requisition is made, the lease may be declared for-

feited, and the governor must proceed as is required in the case of the death of the lessee.

Proceedings to evict the lessee.

§ 3874. In case the lease is declared forfeited, according to the provisions of the preceding section, and the lessee or any other person in possession of the penitentiary, refuses on demand to deliver up the same to the person appointed by the governor, together with the keys, and all the property of the state, the governor must issue his order to the sheriff of Coosa county, commanding him to put such person in possession of the same, which order must be immediately executed by such sheriff; and the lessee, or the person in possession, so refusing, is guilty of a misdemeanor, and on conviction must be fined not less than two thousand dollars, and imprisoned for twelve months.

On failure to give bond next bid accepted.

§ 3875. If the lessee fail to give the bonds required by this chapter, and to take the oath required by section 3901, the governor may accept the proposals of the next highest bidder.

Inventory made by inspectors, and property delivered to the lessee.

§ 3876. On the approval of the bonds required by this chapter, and taking the oath prescribed by section 3901, the inspectors of the penitentiary must make a correct inventory of all the personal property belonging to the state, appertaining to the penitentiary; make a correct appraisement of the same, and enter each article with the appraisement in a book, kept by them; after which they must deliver such property with the keys, and all the buildings, to the lessee, on his giving a receipt for the property so inventoried.

Lessee the warden of the penitentiary.

§ 3877. The lessee is, during the continuance of his term, the warden of the penitentiary, and has all the powers given to, and must discharge all the duties required of, that officer by law, and has the sole authority in directing the employment and labor of the convicts within the penitentiary, under the regulations prescribed by law, and receiving to his own use the proceeds of such labor.

Lessee to furnish guards.

§ 3878. In addition to the duties devolving on him as warden, the lessee must:

1. Furnish at his own expense a sufficient number of competent guards, the number to be determined by the board of inspectors.

Food, clothing, &c.

2. Supply, at his own expense, the convicts with a sufficiency of healthy food, comfortable clothing, beds and bedding, and medicines for the sick; see that they are properly attended and their wants provided for in sickness; and treat them in all respects with humanity, without imposing on them more labor than they are able to perform, or labor which is injurious to their health.

Chaplain.

3. To provide, at his own expense a chaplain, to perform divine service every Sunday, and a competent physician to attend the sick convicts.

To keep convicts and make repairs

4. To keep the convicts with safety, and to cause all repairs to be made which may be necessary to effect that object.

5. To perform such other duties as are required by law of him.

§ 3879. The lessee is civilly responsible for the acts or omissions of all persons employed by him. Responsible for his agents

§ 3880. He must pay the inspectors the compensation allowed them, and at such times as are prescribed by law, and failing to make such payment, the same may be recovered of him and his securities, after demand made of any of them having three days' notice, by motion in the circuit court of Coosa county, with interest, and five per cent. damages; and on the trial a copy of the bond certified by the comptroller is evidence. Pay of inspectors.

§ 3881. In case of the death of the lessee before the termination of his lease, the inspectors must immediately employ a fit person to take charge of the penitentiary as warden, and employ the other officers and guards, until the appointment made by the governor as hereinafter directed, and the compensation of such warden, officers and guards, when certified by the inspectors, and approved by the governor, must be paid out of the state treasury. Death of lessee.

§ 3882. Such warden, officers, and guards, are for the time being under the direction and control of the inspectors, who must, during such time, direct the labor of the convicts, as may be most advantageous for the state. Inspectors' authority in such case.

§ 3883. Upon receiving notice of the death of the lessee, the governor must forthwith advertise in the papers designated in section 3863, for sealed proposals for a lease of the penitentiary for six years, which publication must be made for at least six weeks, and must designate the day after which no proposals will be received, and the day on which the lease is to commence. Advertisement for proposals on death of lessee.

§ 3884. The governor must open such proposals on the day appointed, or as soon thereafter as may be, and must accept proposals, as required by the previous provisions of this chapter. Acceptance as of first proposals.

§ 3885. The proposals must be made, the names of the securities stated, bond executed and approved, recorded, and kept in the same office, inventory, and appraisement made by the inspectors, and possession delivered to the lessee, as required by the previous provisions of this chapter; and such lessee must perform all the duties imposed on the lessee by the provisions of this chapter, and under the same penalties. Proposals and inventory as in the first instance

§ 3886. Until such lessee qualifies, and enters on his duties, the penitentiary is under the control and direction of the inspectors, subject to the supervision of the governor. Inspectors' authority till lessee qualifies.

§ 3887. In case no lease is made under the provisions of this chapter, the governor is authorized to appoint a warden, who holds his office until the end of the next session of the general assembly, and until his successor is qualified. Warden appointed if no lease is made.

§ 3888. The other officers, except the inspectors, are governed as to their appointment, vacancies, compensation, duties and powers, by the laws in force before the fourth of February, one thousand eight hundred and forty-six. Laws in force before 1846 to govern in such case.

Warden governed by same law.

§ 3889. The warden so appointed is also, as to his compensation and duties, governed by the laws in force before the fourth of February, one thousand eight hundred and forty-six.

Expenses paid by treasurer.

§ 3890. In the case provided for by section 3887, the treasurer is, on the direction of the governor, to appropriate such sum as he may direct, not exceeding at the rate of seven thousand dollars a year, for the expenses of the penitentiary.

Lease terminated by death, and rent due only to time of termination of the lease.

§ 3891. In case of the death of the lessee, the lease is terminated, and rent must only be paid up to the time of his death; and in case of the forfeiture of the lease under the provisions of section 3873, the state is only entitled to rent up to the time the lessee delivers possession of the penitentiary, and property he has received, or the appraised value thereof, to the person appointed by the governor to receive the same.

Lessee to keep the buildings in repair and return the property as he received it

§ 3892. It is the duty of the lessee to keep the penitentiary, and all the buildings belonging thereto, in complete repair, so that at the expiration of his lease, or in case of the forfeiture of the same, such penitentiary, buildings, and all the property belonging to the state appertaining thereto, are in as good a condition as when he received it, or in case of personal property received by him, must pay the appraised value of the same, and failing so to do, his bond given under section 3871 stands as security to the state therefor.

Accidents excepted.

§ 3893. The provisions of the preceding section must not be so construed as to hold the lessee or his securities responsible for injuries shown by him to be the result of inevitable accident; but the burthen of proof in such cases rests on the lessee or his securities.

ARTICLE II.

The organization of the penitentiary.

SEC.
3894. Inspectors, warden, physician and guards, are the officers of the penitentiary.
3895. Inspectors appointed by the governor, and vacancies.
3896. Physician appointed by lessee with consent of the inspectors, removable by governor or inspectors.
3897. Vacancy to be filled in three days.
3898. Pay of inspectors three dollars per diem.
3899. Payable at the end of each year.
3900. Guard under control of warden, and supplied with arms by the state.
3901. Each officer takes an oath; its form.

Officers of the penitentiary.

§ 3894. The organization of the penitentiary includes three inspectors, one warden, one physician, and such number of guards as the inspectors may from time to time determine are necessary.

Inspectors.

§ 3895. The inspectors are appointed and vacancies supplied by the governor, and hold office for the term of two

years from their appointment, and until their successors are appointed and qualified.

Physician.

§ 3896. The physician is appointed by the lessee, with the advice and consent of the inspectors, and is removable by the inspectors or the governor for incompetency or neglect of duty, to be determined by such inspectors or the governor.

Vacancy in the office of physician.

§ 3897. When any vacancy occurs in the office of physician to the penitentiary, if the lessee does not supply the same within three days thereafter, the inspectors must supply such vacancy on the fourth day.

Pay of inspectors.

§ 3898. The pay of the inspectors of the penitentiary is three dollars a day each, for every day's service actually and necessarily rendered, in conformity with the provisions of this title, not to exceed two hundred dollars to any one inspector in any one year, and at that rate for any shorter period that he may serve.

When due.

§ 3899. The compensation of the inspectors must be paid at the end of each year's service, or in case of death, for such shorter period as they have served. In case of resignation, they are entitled to no pay for less than a year's service.

Guard under control of warden.

§ 3900. The guard is under the direction and control of the warden, and must be supplied by the governor with arms and accoutrements out of the public arms, the warden giving his receipt for the same, and being responsible for their safe keeping and delivery in good order to his successor.

Oath of officers and guards.

§ 3901. The warden, inspectors, guard, and all other officers employed about the penitentiary, in addition to the oath required by the first section of the sixth article of the constitution, must take and subscribe the following oath:

"I do solemnly swear that I will faithfully execute all the duties required of me as —— in the penitentiary of the state of Alabama, and will execute the laws and regulations prescribed for the government of such institution, so far as concerns my office, (or appointment, as the case may be,) and that I will on no occasion ill-treat or abuse any convict under my charge or control, or punish him beyond the punishment ordered by law, or the rules and regulations of the institution."

ARTICLE III.

Powers and duties of officers.

SEC.

3902. Board to appoint a president, records of their proceedings to be kept.
3903. Board to establish rules.
3904. Governor to revise, annul, or amend them, and when revised, warden to have a copy.
3905. One inspector to visit the penitentiary weekly, and the board to visit it monthly.
3906. Inspector's office vacated by failure to attend three meetings.
3907. Inspectors to report neglect of duty to governor.
3908. To make a report of the transactions and condition of the penitentiary annually to the governor.
3909. Convicts removed if contagious disease makes it necessary.

SEC.
3910. Governor to visit penitentiary annually.
3911. Warden to reside on the premises, and leave a deputy approved by the inspectors when absent.
3912. Warden has the custody of the penitentiary and appurtenances.
3913. He must examine daily into its condition.
3914. Physician to visit the hospital, &c.
SEC.
3915. Register of health, &c., of the convicts.
3916. Physician to order removal of the sick to the hospital.
3917. Insane convict removed to hospital by order of physician.
3918. Inspectors and officers exempt from road and jury duty.
3919. Registers, returns, and correspondence with governor are official papers, and to be kept as such.

President of board of inspectors.

§ 3902. The board of inspectors must from time to time choose one of their own number president, who must preside at their regular meetings, and whenever, in his opinion, the exigency requires, must convene the board. One of their number must keep a regular minute of their meetings and proceedings, which must be signed by them, and preserved in the penitentiary.

Minutes of proceedings.

Rules established by the board of inspection.

§ 3903. The inspectors must from time to time establish rules and regulations consistent with the laws of the state, for the direction of the officers of the penitentiary in the discharge of their duties, for the government and discipline of the convicts, and the custody and preservation of the public property.

Copy of rules sent to governor, who may modify them, &c.

§ 3904. They must cause copies of their rules to be laid before the governor, who may approve, annul, or modify the same; and must cause a copy of all such rules and regulations as have been approved by the governor, to be certified by the board and delivered to the warden.

Inspector to visit penitentiary.

§ 3905. The inspectors, or one of them, must visit the penitentiary at least once in each week; and it must be visited by the board of inspectors once a month, and oftener if they think it necessary, for the purposes of inspection, and ascertaining if the laws, and the rules and regulations relating thereto, are duly observed; if the warden, his agent and guards employed about the penitentiary are competent, vigilant, and faithful, and the convicts properly governed.

Inspector vacates his office by failure to attend three meetings.

§ 3906. The inspectors attending at the regular meetings of the board must note the failure of any inspector to attend at such meetings, and if any one fails to attend for three successive monthly meetings of the board, unless prevented by sickness, his office is vacated, and the other inspectors must immediately notify the governor, who must supply the vacancy; and the inspector so failing is entitled to no compensation which may be due up to the first of such failures.

Violations of law or neglect of duty reported.

§ 3907. The inspectors must report to the governor forthwith all violations of law, or omissions or neglect of duty by the warden, and every person employed by him about the penitentiary.

Inspectors report annually to the governor.

§ 3908. The inspectors must, at least fifteen days before the first day of December in each year, transmit to the governor a report of the transactions of the penitentiary year,

of the number of convicts confined therein, the offences for which committed, and their respective periods of imprisonment, their ages, previous occupation, profession or employment, and where from, the number of convicts pardoned, discharged, or who have died during the year, stating the date of their conviction and of their pardon, discharge, or death, the period of time for which they were sentenced, the counties in which they were convicted, the conduct of each of the convicts from the time of their commitment, or from the report of the preceding year up to the time of the report, and in case of death, the particular disease of which the convict is supposed to have died, and the date of his death.

Removal of convicts in case of contagious or infectious disease.

§ 3909. The inspectors may remove the convicts to such place of security within the state as they may deem expedient, if in their opinion the prevalence of any epidemic, infectious or contagious disease, or any other urgent necessity, renders such a measure necessary and proper, taking all needful precautions for the safe keeping of such convicts when removed, and to prevent their escape during such removal.

Governor to visit it annually.

§ 3910. The penitentiary must be visited by the governor annually, and as much oftener as he may think proper, for the purpose of examining its condition.

Warden to reside in the penitentiary.

§ 3911. The warden must reside constantly within the precincts of the penitentiary, and must, whenever absent, leave such person as the inspectors may deem a fit person to attend in his place as a deputy warden.

Warden has the custody of all the property.

§ 3912. The warden has the charge and custody of the penitentiary, with the land, buildings, furniture, tools, implements, and every other species of property within the precincts thereof, or appertaining thereto.

Warden to examine daily into the condition of convicts.

§ 3913. It is the duty of the warden to examine daily into the state of the penitentiary, and the health, conduct and safe keeping of the convicts.

Physician's duties.

§ 3914. The physician must visit the hospital of the penitentiary at least every other day, and as much oftener as may be necessary; prescribe for convicts who are sick, and attend to the regimen, clothing and cleanliness of such of them as are in the hospital; and report to the inspectors any failure on the part of the warden to provide fully for their necessary wants; he must keep a regular journal, which must at all times be kept in the penitentiary, stating the time of all admissions to the hospital, the nature of the disease, and the treatment of each patient; the time of his discharge from the hospital, or his death.

Journal of the diseases, &c.

Also a register of all the convicts.

§ 3915. The physician must also keep a register of all the convicts under his charge, stating their disease, and the state of their health on entering and leaving the hospital, and the cause of disease when the same can be ascertained; also a register of all infirm convicts, stating their names, ages, places of birth, and the particular infirmity of each; which register must always remain in the hospital open to inspection.

Sick convict removed to the hospital.

§ 3916. Whenever any convict complains of such illness as requires medical aid, notice must be given to the physician, who must visit such convict; and if in his opinion the illness is such as requires the removal of the convict to the hospital, the warden must have him removed thereto, where he must remain until the physician determine he can leave it without injury to his health.

Insane convict removed to the hospital.

§ 3917. Whenever the physician of the penitentiary reports to the warden that any convict is insane, the warden must cause such insane convict to be removed to the hospital, if considered necessary by the physician, there to remain until discharged therefrom by him.

Inspectors, &c., exempt from road and jury duty.

§ 3918. The inspectors, warden, and all other persons employed in the penitentiary, are exempt from working on roads and serving as jurors during their continuance in those offices, or such employment.

Registers, returns and correspondence, public documents, and kept as such.

§ 3919. All registers, returns, and other documents relating to the affairs of the penitentiary, are public documents, and must remain therein; and the warden must preserve official copies of his correspondence with the governor, inspectors, or other public officers, and of any official communication he may receive from them.

ARTICLE IV.

Removal of prisoners to the penitentiary.

SEC.

3920. Convicts sentenced to be removed to penitentiary by the sheriff.
3921. Fined on failure for five days to remove them.
3922. Excuse may be shown the court.
3923. He may also be prosecuted for an escape.
3924. Sheriff to summon two guards for each prisoner; may summon others if guards sick, &c.
3925. Circuit judge may order additional guards.
3926. Additional guards summoned by sheriff to prevent a rescue.
3927. Party refusing to act fined one hundred dollars.
3928. Guards under the command of the sheriff.
3929. Privileged from arrest while on duty.
3930. Judge of the circuit court may allow a deputy to act.

SEC.

3931. Pay of the sheriff and guards for conveying convict.
3932. Compensation paid only for guards actually employed.
3933. Same pay allowed deputy.
3934. Same pay allowed for returning prisoner for a new trial.
3935. Sheriff and guard to pay their own expenses.
3936. Jailors must receive and keep the convicts on their way.
3937. Punishment for attempt to escape by the way.
3938. Punishment of sheriff, &c., for permitting escape.
3939. Prisoner received whose sentence is commuted.
3940. Warden to receive convicts sentenced by the United States.
3941. Copy of the sentence to be delivered warden.

Convict to be removed by sheriff to the penitentiary.

§ 3920. Every person sentenced by any court in this state, for any offence punishable by confinement in the penitentiary, except in the case provided for in section 3706, must, as soon as possible after his sentence, be safely remov-

ed by the sheriff of the county in which the conviction was had, to the penitentiary, and therein be kept during the time of his sentence, in the manner and on the terms prescribed by law.

Fine for failure to remove in five days.

§ 3921. Every sheriff who neglects to remove such convict from the jail, except in the case provided for in section 3706, within five days after the adjournment of the court by which he is sentenced, forfeits all claim for compensation for such removal, and is also guilty of a misdemeanor, and punishable, on conviction, by a fine of five hundred dollars.

Excuse for failure.

§ 3922. On trial on an indictment under the preceding section, the defendant may show any excuse for failing to remove such convict, the sufficiency of which is to be determined by the court.

Also prosecuted for an escape.

§ 3923. A prosecution under section 3921, is no bar or defence to an indictment against the sheriff for an escape.

Sheriff to summon guards to assist him.

§ 3924. The sheriff charged with the removal of prisoners to the penitentiary, must summon a sufficient guard, not exceeding two for each prisoner, whose duty it is to assist in the conveyance of such prisoners to the penitentiary; and in case any of the guard are unable, from sickness or any other cause, to proceed with such prisoners, such sheriff is authorized to supply their places by summoning new guards in any county through which he may pass.

In case of sickness the guards summoned.

Circuit judge may direct additional guards to be summoned.

§ 3925. If two guards to each prisoner are not sufficient, the judge of the circuit court may give an order directing the sheriff to summon such number of additional guards as may be necessary, to ensure the safe transportation of the prisoners to the penitentiary.

Sheriff may summon additional guard to prevent rescue.

§ 3926. If by any attempt to rescue a convict, while being carried to the penitentiary, or other unforeseen danger, it is necessary for the safe conveyance of the convict to summon a stronger guard, the sheriff may summon such additional guard as may be necessary.

Refusal to act is a misdemeanor.

§ 3927. Any person summoned as a guard under fifty years of age, refusing to attend without a good excuse, to be determined by the court, is guilty of a misdemeanor, and punishable, on conviction, by a fine of one hundred dollars.

Guards are under the command of the sheriff.

Penalty for disobedience.

§ 3928. The guards summoned under the provisions of this chapter, are under the control and direction of the sheriff, and must obey his directions and commands in relation to the safe conveyance of the prisoner; and in case of refusal, are guilty of a misdemeanor, and, on conviction, punishable by a fine of not less than one hundred dollars.

Guards, &c., privileged from arrest.

§ 3929. The officers and guards attending any prisoner under the provisions of this chapter, are privileged from arrest in all cases, except felony and breach of the peace, during the time they are engaged in conveying such prisoner to the penitentiary and returning, allowing one day for each twenty miles from the court house of the county in which they are summoned.

Judge of the

§ 3930. Any judge of the circuit court may, for good

circuit court may allow a deputy to be substituted.

cause shown, release the sheriff from the conveyance of any convict to the penitentiary, on his substituting in his place a trustworthy deputy; and such deputy is invested with all the powers, and subject to all the responsibilities of the sheriff, in the performance of the duties devolved on him.

Pay of sheriff and guards for conveying the convict to penitentiary.

§ 3931. When any sheriff conveys any convict to the penitentiary, he is entitled to receive the compensation hereinafter provided, for which the comptroller must furnish him a warrant on the state treasurer, on the production of the receipt of the warden of the penitentiary for such convict; and the affidavit of the sheriff, stating the number of miles on the land route usually travelled, from the place where the convict was sentenced to the penitentiary; the number of guards employed to insure the safe conveyance of the convict; the distance each of such guards have travelled. The sheriff is, for every twenty miles on such route to and from the penitentiary, allowed for himself two and a half dollars; for each of the guards, two dollars; and for each convict, one dollar and a quarter; to be paid to the sheriff, from whom each guard is entitled to receive the compensation allowed them. The sheriff is also entitled to the amount expended for himself, guards and convict, for ferriages and tolls in conveying such convict to the penitentiary.

Compensation paid only for guards actually employed.

§ 3932. No sheriff is entitled to receive compensation for more than the number of guards actually employed; and if more than two are employed for any convict, a certified order of the judge must be produced; or if summoned without such order, the particular circumstances which rendered the employment of an additional number necessary, must be stated on affidavit.

Same pay to the deputy.

§ 3933. The provisions of the two preceding sections apply to deputy sheriffs, when the removal of any convict is made by them.

Compensation for removing prisoner to the county, on remanding the case.

§ 3934. In case any convict is imprisoned in the penitentiary, and the judgment is reversed, and the case remanded, the sheriff of the county to which the case is remanded, or his deputy, if he removes such prisoner to such county, is entitled to the same compensation for himself and guards, not exceeding two in number for each prisoner, to be paid upon affidavit, in the same manner as for removing convicts to the penitentiary.

Sheriff, &c., to pay their own expenses.

§ 3935. The sheriff and guard must pay their own expenses out of the compensation allowed them, under the provisions of this chapter.

Jailors to receive and keep the convicts on their way.

§ 3936. It is the duty of all jailors to receive and securely keep, for the legal charge for victualling prisoners, all convicts or prisoners, on their way to and from the penitentiary, whenever the sheriff, or other officer conveying such convict or prisoner, thinks it necessary to have them secured for the night, or during any other time they may necessarily be detained on the way.

Attempt to

§ 3937. All the provisions in regard to the escape, or at-

tempt to escape, of convicts from the penitentiary, extend to escapes, or attempts to escape, made at any time subsequent to conviction, whether previous to leaving the place of trial or while on the way to the penitentiary. escape by convict on the way.

§ 3938. If any sheriff, deputy sheriff, guard, or jailor, having charge of a convict, at any time subsequent to the conviction, voluntarily suffer him to escape from custody, such sheriff, deputy sheriff, guard or jailor, must suffer the same imprisonment in the penitentiary to which the convict was sentenced; but if such convict is retaken on pursuit and delivered to the warden of the penitentiary, such sheriff, deputy sheriff, guard or jailor, shall be punished by imprisonment in the penitentiary for any term that the court may direct, not exceeding the term for which such convict was sentenced. Punishment for permitting escapes.

§ 3939. The warden must receive into the penitentiary on the order of the governor, any person convicted of any crime punishable with death, or infamous punishment, whose sentence is commuted to imprisonment, either for life or a term of years, in the penitentiary, and to confine such person according to the terms of such commutation. Prisoner received whose sentence has been commuted.

§ 3940. The warden must receive into the penitentiary, all persons convicted before any court of the United States, held within either of the districts of this state, and sentenced by such court to the punishment of imprisonment in the penitentiary, and safely keep and employ such convicts pursuant to their sentence and the rules and regulations of the penitentiary, for the period of such sentence, or until such convict is otherwise discharged by due course of law of the United States. Convicts sentenced by the United States courts.

§ 3941. A certified copy of the sentence must be delivered with each convict to the warden of the penitentiary, and registered in a book kept by him. Sentence of convict to be delivered to the warden.

ARTICLE V.

Police of penitentiary and punishment of escapes.

SEC.
3942. On reception of convict, warden to record a description, &c., and examine his person for instruments of escape.
3943. Warden to take charge of any money or effects on his person.
3944. Convicts to be washed and purified before working with the others.
3945. Convict's clothes put away until his release.
3946. Convicts kept at labor, and at night confined in separate cells.
SEC.
3947. To be dressed in a uniform; style fixed by the inspectors.
3948. Each to have a Sunday suit.
3949. Sanitary regulations as to habits of cleanliness, &c.
3950. Turnkey over each ward; his duties.
3951. Each convict to have a bible.
3952. Diet and hours of meals of convicts regulated by the inspectors.
3953. Convict may work for himself when not engaged for the warden.

SEC.
3954. Letters to or from a convict first read by the warden.
3955. Spirituous liquors excluded.
3956. Punishment for supplying convict with liquor.
3957. Police rules not discussed before a convict, nor any conversation with him but on business.
3958. Male and female convicts kept apart.
3959. Warden may punish by solitary confinement.
3960. Fed on bread and water during such confinement.
3961. No other punishment inflicted without the authority of the inspectors.
3962. Warden to report to inspectors the punishment awarded.
3963. On death of a convict justice to inquire the cause, &c. Burial of the body in the penitentiary burying ground.
3964. Convict on pardon or expiration of his time supported until well, if then sick.
3965. His expenses paid and clothes provided on release.
3966. The law of escapes and other rules to be explained by warden to the convict.
3967. Escape or attempt to escape, punished by additional imprisonment.
3968. Punishment of prisoner for a term of years for an assault on an officer.
3969. Punishment of such prisoner for conspiracy.
3970. Prisoner for life punished by solitary confinement.
3971. Punishment for aiding convict's escape.
3972. United States' prisoners; penalty for attempting escapes; liability of officers permitting escapes.
3973. Confinement presumption of legal conviction.
3974. Governor notified of convict's escape.
3975. Officer permitting escape, himself imprisoned.
3976. Punishment for releasing convict from solitary confinement.
3977. Warden has same fee as sheriff for removing prisoner by order of a court.

Warden to record a description of each convict, and search for instruments of escape.

§ 3942. It is the duty of the warden, upon the reception of any convict into the penitentiary, to take his or her height, and cause the same to be entered in a book, with the time when such convict was received, his name, age and complexion; color of his hair and eyes; the county in which convicted, the nature of the crime, period of imprisonment and place of nativity; and the baggage and person of every convict must be carefully searched, and every instrument taken therefrom by which he may effect his escape.

To take charge also of his money or effects.

§ 3943. The warden must also take in charge any property or money, or other thing of value in the possession of any convict at the time of his entering the penitentiary, and pay or deliver the same to such person as the convict may in writing direct, or to the convict on his discharge; or to his personal representatives, in case of his death previous thereto; and should no personal representative be appointed within six months after his death, then into the state treasury.

Convicts to be washed and purified.

§ 3944. To prevent the introduction of contagious disorders, the warden must cause every person sentenced to the penitentiary to be washed, cleansed and kept entirely apart from the other convicts, until it is certified by the physician that he may be permitted to join them in labor, without danger to their health.

Convict's clothes put away for his use on release.

§ 3945. The warden must also cause the clothes of the convicts when received into the penitentiary to be washed, and carefully put away, place a ticket with their names on the same, to be returned to them on their discharge; or if the convict directs the sale of them, to dispose of them to

the best advantage, and retain the money arising from such sale, to be paid to the convict on his release, or to be disposed of as provided for in section 3943.

Convicts to be kept at labor and confined at night in separate cells.

§ 3946. All persons sentenced to the penitentiary must be kept at labor, when in health; no communication must be allowed between them and any person without the prison; they must be confined in separate cells in the night time, and in the day all intercourse between them must as far as practicable be prevented.

Uniform.

§ 3947. All convicts must be clothed, during the term of their imprisonment, in a comfortable manner in coarse and cheap clothing, made in a uniform and peculiar style, so as to distinguish them from other persons; the number of suits, material and style to be determined by the board of inspectors.

Sunday suit.

§ 3948. That Sunday may be suitably distinguished, by the convicts, each of them must be furnished by the warden, under the direction of the inspectors, with a cheap and neat suit of clothes, to be worn on that day.

Sanitary regulations.

§ 3949. The warden must cause the prisoners to wash themselves every morning, and immediately before meals; to put on clean under garments at least once a week, and the males to have their beards shaved as often as may be necessary; their cells swept every morning, and fumigated during the summer and fall season once a week or oftener, with some disinfecting substance; and to adopt such other measures as may be recommended by the physician, or directed by the board of inspectors, to promote neatness and health.

Cells divided into wards, and a turnkey set over each.

§ 3950. The warden must cause all the rooms and cells to be numbered and divided into as many wards as there may be turnkeys, allotting to each ward, as nearly as may be, an equal number of rooms and cells; and assign each ward to a turnkey, whose duty it is, under the direction of the warden, to examine every evening the doors, beds and cells of the convicts; to search and lock them up before dark, and not permit them to carry into their cells any instrument that may assist them in escaping; to extinguish carefully all the fire in the work shops; and a bell must be rung every evening, at not later than ten o'clock, at which time every light in the cells of the convicts must be put out.

His duties.

Convicts to be provided with bibles.

§ 3951. The warden must carefully observe the conduct of the convicts, each of whom must be provided with a bible, which he must be permitted to read in his cell, at such time as he is not engaged in labor.

Diet of the convicts.

§ 3952. The diet of the prisoners, in quantity and quality, must be such as is directed by the board of inspectors; the provisions sound and wholesome, and the regular hours of meals announced by the ringing of a bell, at the sound of which the convicts must assemble at their respective tables, except the sick, who must be furnished according to the directions of the physician.

Convict may

§ 3953. The convicts must be permitted to work for them-

work for himself in leisure hours.

selves after the performance of their daily labor, in such way as the warden may approve, and under such regulations as may be adopted by the board of inspectors; but they shall not be allowed to perform any work in their cells, without the permission of the warden. The work done by the convicts under this section shall be disposed of by the warden, and the money received therefor remain in his hands, to be disposed of according to the provisions of section 3943, or expended in the purchase of such articles as the convict may direct, not inconsistent with the rules of the penitentiary.

Communication between convicts and their friends.

§ 3954. All letters sent to or from any convict, must be first read by the warden, and in case of absence the person acting in his place, and if nothing is contained therein which may promote crime, may be mailed or delivered as the convict directs, and any relation or friend may be allowed, in the presence of the warden or deputy warden, to speak to any of the convicts, when in the opinion of the warden the condition of his family or property require it; and all information concerning the convicts must be furnished to their friends on personal application, or by letter, post-paid, directed to the warden.

Spirituous liquors excluded.

§ 3955. No spiritous or intoxicating liquors must be introduced into the penitentiary, except such as may be used in the families of the officers residing within its precincts, or necessary for the hospital department.

Punishment for supplying liquor.

§ 3956. Any officer of the penitentiary who allows any spirituous or intoxicating liquors to be used by or given to any convict, unless by the directions of the physician in writing, must forthwith, if an officer, be dismissed from his office, and forfeit all the wages due him; and is also guilty of a misdemeanor, and on conviction must be fined not less than one hundred dollars.

No communication between officers and convicts except on their business.

§ 3957. No officer or person holding any appointment, the duties of which are to be discharged within the precincts of the penitentiary, must say any thing in relation to the police thereof, in the presence of a convict, except it be to direct him in his duty or to admonish him for a delinquency; neither must he hold any conversation with the convicts, or allow them to speak to him on any subject, except it relate to necessary duty or business.

Males and females kept apart.

§ 3958. The male and female convicts must at all times, and on all occasions, be kept separate and apart, and the females, as well as the males, confined in separate cells at night.

Punishment of convict by solitary confinement.

§ 3959. If any convict neglects or refuses to perform the labor assigned him, or willfully injures any of the materials, implements or tools, or engages in conversation with any other convict, or in any other manner violates any of the regulations of the penitentiary, he may be punished by solitary confinement for a period not exceeding thirty days, for each offence, at the discretion of the warden or person acting in his place.

Bread and

§ 3960. Every convict punished by solitary confinement,

must be confined in a solitary cell, and fed with bread and water only during such confinement, unless the physician certify to the warden that the health of such convict requires other diet. water only during such confinement.

§ 3961. No convict must be punished in any other way than is herein provided, except by the authority of the board of inspectors. Other punishments inflicted by inspectors.

§ 3962. The warden, or person acting in his place, must in each case in which he punishes a convict, report the same in writing to the president of the board of inspectors, within five days after the punishment is awarded, stating the offence and the punishment; and the president may convene the board to consider the case so reported; and if it appears to the board that the punishment was improperly awarded or inflicted, the same must be so entered on their minutes. Warden to report the punishment awarded.

§ 3963. Whenever any convict dies in the penitentiary, the warden must forthwith notify some one of the inspectors, if practicable, and summon at least one justice of the peace of Coosa county to examine the body of the deceased; whose duty it is to attend and ascertain as nearly as may be the cause of his death, and report the same to the board of inspectors; and the warden must not permit the body to be buried until such examination is had. If the body is not applied for by the friends of the deceased within a convenient time after such examination, the warden must have it decently interred in the burying place, to be provided in the vicinity of the penitentiary. Inquiry on the death of the convict. Burial.

§ 3964. If any convict is sick at the expiration of his term of imprisonment, he must not be be discharged, except at his request. Convict not discharged unless in good health.

§ 3965. Each convict, if he has no money, must be furnished with an amount sufficient, not exceeding ten dollars, at the discretion of the inspectors, to reach his place of residence, and must be furnished with decent clothing, to be advanced by the warden and repaid by the state. Convict to have his expenses paid and clothes provided on release.

§ 3966. Such of the foregoing regulations, with all others that may hereafter be adopted by the legislature or inspectors, with the approbation of the governor, which it is necessary that the convicts should know, together with all the sections of this chapter in relation to escapes, must be printed so as to be conveniently read, and set up in each workshop and cell, in a conspicuous place, and also read and explained by the warden to each convict on his admission to the penitentiary. The law of escapes and other rules explained by warden to the convicts.

§ 3967. If any convict, imprisoned in the penitentiary for a term less than life, escape, or attempt to escape, on conviction thereof, he must be punished at the discretion of the court, by imprisonment in the penitentiary not less than two or more than five years; and convicts so escaping, must remain in the penitentiary as other inmates, after their apprehension, until their trial takes place, unless their term of imprisonment has expired; in which case they may be dischar- Punishment of escapes or attempts to escape.

ged on giving sufficient bail; and upon the trial for such escape, the fact of imprisonment in the penitentiary, is presumptive evidence of a conviction, and sentence to imprisonment therein.

Punishment of prisoner for years for assault on officer.

§ 3968. If any convict confined in the penitentiary for a term less than life, assaults the warden, or any other officer thereof, with the intent to kill or maim, he must, on conviction thereof, be imprisoned in the penitentiary not less than ten or more than twenty years.

Of such prisoners for a conspiracy to kill, &c.

§ 3969. If any one or more convicts in the penitentiary, for a less term than life, conspire with another, or other convicts for the purpose of killing or maiming any officer of the penitentiary, they must, on conviction, be imprisoned in the penitentiary not less than five or more than ten years.

Of prisoner for life for attempt to escape or kill officer.

§ 3970. If any convict confined in the penitentiary for life, escapes or attempts to escape therefrom, or assaults the warden or any other officer thereof, with intent to kill or maim, or conspires with another or other convicts, for the purpose of killing or maiming such warden or other officer, he must, on conviction, be punished by solitary confinement in the penitentiary not exceeding two years, at such intervals as the court may direct.

Punishment for aiding convict to escape.

§ 3971. Every person who conveys into the penitentiary any disguise, instrument, tool, weapon, or other thing, useful to aid any convict in escaping therefrom, with the intent to facilitate the escape of such convict; or who aids any convict in any attempt to escape, whether such escape is effected or not; or who rescues, or attempts to rescue any convict confined therein, or held in custody of any officer or person under sentence of imprisonment therein, must, on conviction, be punished by imprisonment in the penitentiary not less than two or more than ten years.

Attempt at escape by prisoners of United States

§ 3972. If any convict committed by the courts of the United States, escapes, or attempts to escape out of the penitentiary, he is subject on conviction to the same punishment as if he had been committed by virtue of a conviction under the laws of this state; and the warden or any other officer having charge of such convict, is liable to the same penalties and punishment, for any neglect or violation of duty in respect to the custody of such convict, as if he had been committed under a conviction and sentence under the laws of this state.

Liability of warden, &c., for permitting escape.

Confinement presumption of legal conviction.

§ 3973. The fact that a person was confined as a prisoner in the penitentiary, is in all cases presumptive evidence of the legal conviction and sentence of such person to the penitentiary, under the laws of this state or the United States, as the case may be.

Proceedings when convict escapes.

§ 3974. Whenever any convict in the penitentiary escapes therefrom, it is the duty of the warden to take all proper measures for his apprehension, and for that purpose he must forthwith communicate to the governor the fact of such escape, the time when, and the circumstances under

which it was committed, together with a particular description of the convict, his age, size, complexion, color of hair, and eyes, from what county committed, for what offence, and when.

Punishment of officer, &c., for aiding escape.

§ 3975. If any officer, or other person employed in the penitentiary, voluntarily suffers any convict imprisoned therein to escape, he must, on conviction, be imprisoned in the penitentiary for a period equal to the unexpired term of such convict, but in no case less than two years.

Punishment for releasing convict from solitary confinement.

§ 3976. If any officer, or person employed in the penitentiary, suffer any convict under sentence of solitary confinement to be at large, out of the cell assigned him, unless directed by the physician to remove him to the hospital on account of sickness, or allows any convict to be conversed with contrary to the regulations of the penitentiary, he must, on conviction, be punished by fine, not less than one hundred or more than five hundred dollars.

Fees of warden for removing prisoner by order of court.

§ 3977. The warden is entitled to the same fees and allowances for himself and guards, not exceeding two for a prisoner, for removing a prisoner to and from the penitentiary under an order of court, as the sheriff and guards are allowed for the removal of prisoners to the penitentiary.

ARTICLE VI.

Service of process, and testimony of convicts.

SEC.
3978. Process served on convict by leaving a copy with the warden. In default of appearance, claim to be proved.
3979. Commission issued to inspectors to take convicts' answer; counsel allowed him, and on refusal to answer, decree pro confesso rendered.
3980. Judge may direct warden to bring convict to court to testify for the state.
SEC.
3981. Officers liable for an escape, as if in the penitentiary.
3982. Their testimony in civil cases taken on interrogatories by the inspectors.
3983. Defendants in a state case may take their testimony in the same way.
3984. Testimony of convict is excluded if not competent.

Process served by copy to warden.

§ 3978. Whenever any suit is brought against any convict imprisoned in the penitentiary, the summons or subpœna must be directed to the warden, who must make it known to the convict, by leaving a copy with him, and returning the original by mail, or private conveyance, to the proper court; indorsing the title of the suit and character of the process, on the envelop; and in all suits pending against any one imprisoned in the penitentiary, against whom it may be necessary to issue any mesne process, the like proceedings may be had; and if no appearance is entered for the convict, the court before whom the suit is pending must require the plaintiff to prove the claim, or cause of action.

Claime to be proved if no appearance entered.

Commission to inspectors to take convict's answer to a bill in chancery.

§ 3979. When the complainant in any suit in chancery, against an imprisoned convict, defendant, requires his answer to the bill, the register of the court in which the suit is pending must issue a commission directed to the inspectors of the penitentiary, requiring some one of them to take the answer of such convict. If such convict will voluntarily answer the bill, he may be allowed the aid of counsel to prepare his answer, at such convenient times as the inspector executing the commission directs. The answer must be sworn to before the inspector taking the same, and returned with the commission to the proper court. If the convict refuse or neglect for thirty days after he is required by the inspector to make the answer, the inspector must return the commission, and thereon certify the refusal or neglect to answer; after which the allegations of the bill may be taken as confessed, and a decree made against the defendant, as if they had been established by evidence; but nothing in this section contained shall prevent the chancellor from giving further time to answer, on a proper showing.

Counsel allowed.

On refusal to answer decree pro confesso.

If convict's evidence required for the state judge may order warden to bring him into court.

§ 3980. Whenever the presiding judge of any circuit court has reason to believe that the evidence of a convict is necessary in any prosecution by the state, and that other evidence cannot be obtained on behalf of the state, he may direct a writ to be issued, directing the warden to have the body of the convict before the circuit court, on a day named therein, to give testimony for the state in such case; and the warden must have said convict before said court, on said day; and for this purpose may employ a trustworthy deputy, and a sufficient guard, who shall be allowed the same compensation as is allowed to sheriffs and guards for their removal of convicts to the penitentiary; and the further sum of two dollars, for each day they may remain in attendance on the court; and when such convict has testified, the deputy and guard must return him to the penitentiary with all convenient speed.

Guards, &c.

Officers liable for escape.

§ 3981. The convict, deputy, and guard, in going to and from the penitentiary, and while remaining at the circuit court, are respectively liable for an escape, or attempt to escape, in the same manner as they would have been if the convict was in the penitentiary under their custody; and the sheriff or jailor of the county must receive and safely keep the convict in the county jail, during his attendance upon the court, if required to do so by the persons in charge of such convict; for which the jailor is allowed the legal charge for victualling prisoners.

Jailor to receive him.

Convict's testimony in civil suits.

§ 3982. The testimony of convicts in civil suits may be taken upon interrogatories and notice, as in other cases of taking testimony by interrogatories; the commission to be directed to the inspectors, any one of whom is authorized and required to take the answer of the convict on oath, to the same, and make return thereof as in other cases.

§ 3983. The defendant in a state prosecution, may in like

manner take the testimony of a convict in his behalf; but in such case the notice must be given, and a copy of the interrogatories served on the solicitor of the circuit in which such prosecution is pending. Defendant may take testimony of convict.

§ 3984. No provision of this article must be construed so as to authorize the admission of the testimony of a convict who is by law an incompetent witness. Convict's testimony not taken in certain cases.

Title 5.

FEES AND ALLOWANCES IN CRIMINAL CASES.

CHAPTER I.

ARTICLE 1. Fees and allowances to justices and constables, sheriffs, clerks of the circuit court, coroners, solicitors, and attorneys general.
" 2. General provisions.

FEES AND ALLOWANCES TO OFFICERS IN CRIMINAL CASES.

ARTICLE I.

Fees and allowances to justices and constables, sheriffs, clerks of the circuit court, coroners, solicitors, and attorney general.

SEC.
3985. Fees of justices.
3986. In all indictable cases certified to court and taxed as costs.
3987. In petty offences before justice; execution for costs.
3988. Fees and allowance of constables.
3989. In indictable cases certified to court and taxed as costs.
3990. Fees of circuit clerk.
3991. These fees taxed as costs and paid by defendant, on conviction, except forfeitures against jurors and witnesses.
SEC.
3992. Sheriff's fees and allowances in criminal cases.
3993. Taxed as costs, and paid by defendant, on conviction, except in case of forfeiture of witnesses, jurors, and bail.
3994. Coroner's fees.
3995. Fees certified to court, and party convicted of murder, &c., pays them, if no other provision made.
3996. Solicitors' fees.
3997. Attorney general in supreme court cases entitled to tax fee of fifteen dollars.

§ 3985. Justices are entitled to the following fees in criminal cases: Justice's fees

For the complaint	$ 25
For a warrant of arrest	50
For a search warrant	75
For each bond or undertaking of the accused returned to court	50
For each undertaking or bond of witnesses	25
For each subpœna issued	15
For commitment of a defendant to jail	25

For certifying costs to circuit court	$ 25
For each execution for costs	25
For each trial of a petty offence	1 00

Fees certified to circuit court.

§ 3986. In all indictable cases the fees specified in the preceding section must be certified to the circuit court, and on the conviction of the defendant taxed against him, and when collected paid to the justice.

Execution against defendant.

§ 3987. In all petty offences triable before a justice, execution may issue against the defendant for the costs.

Constable's fees.

§ 3988. Constables are entitled to the following fees and allowances in criminal cases:

For executing a search warrant in the day time	$ 1 00
For executing a search warrant in the night time	2 00
For executing any other warrant	50
For conveying a person upon a warrant of arrest before a magistrate, or to jail when committed by a magistrate, for himself and each necessary guard, to be proven by the affidavit of the constable, for each mile	10

For conveying a prisoner to the jail of another county, when there is no jail in, or the jail of the proper county is insufficient, the same fees for himself and guard as is allowed to the sheriff in like cases, to be paid by the county.

Costs must be certified.

§ 3989. In all indictable cases, the costs specified in the preceding section must be certified by the magistrate to the circuit court of the county in which the defendant is tried, and, on conviction, must be taxed against and paid by him.

Circuit court clerk's fees.

§ 3990. Clerks of the circuit courts are entitled to the following fees in criminal cases:

For docketing each cause, to be charged but once	$ 0 10
For issue of any writ or notice	50
Each subpœna issued	25
Each continuance by the defendant	25
Taking undertaking or recognizance, and entering the same	50
For each trial	50
Entering judgment against each defendent	25
Issue of each execution	50
Each entry of the discharge of bail on surrender of the principal, to be paid by the bail	50
Entering order of removal of trial, and the incidents of such removal	1 00
Making transcript and certificate for each hundred words	15
Entry of forfeiture against defendant	50
Final judgment of forfeiture against defendant	50
Entry of forfeiture against witness or juror, each	25
Final judgment	25
Issuing execution	50
Final record for each hundred words	15
Record for supreme court for each hundred words	15
Certifying same	25

§ 3991. The fees in the preceding section specified, must be taxed as costs and paid by the defendant on conviction, except such as accrue upon a forfeiture against the bail, a juror or witness, which must be paid by such bail, juror or witness, unless excused therefrom by the court.

Sheriff's fees.

§ 3992. Sheriffs are entitled to the following fees and allowances in criminal cases:

For executing search warrant in day time	$ 1 00
For executing search warrant in night time	2 00
For serving warrant or writ of arrest	50
For each bond or undertaking returned to court	50
For serving notices, on each person served	50
Committing prisoner to jail	50
Releasing him from jail	50
For victualling prisoner in jail, to be paid by the defendant on conviction, or if discharged or acquitted, or proved insolvent, by the state, for each day	30
For whipping slave under sentence of court	1 00
Branding slave	2 00
For levying and making money on execution for costs	1 00
For summoning jury in capital case	3 00
For summoning jury at any special court for trial of criminal	3 00
Attendance on such court each day	2 00
For executing criminal, to be paid by the county	10 00

For levying and making money on judgments, made absolute against defendants, witnesses, jurors, and judgments confessed under section 3624, the same fees as in civil cases.

For removing prisoner to jail of another county, when jail of proper county is insufficient, or there is no jail in such county, and returning such prisoner when necessary, the same compensation as is allowed by section 3931, to be paid by the defendant, if convicted; and if acquitted or insolvent, by the county.

For removing prisoner under order of a circuit judge, upon removal of trial, or when arrested and confined in jail, in a county other than that where he is triable, the same compensation for himself and guards, not exceeding two for each prisoner, as is allowed by section 3931, to be paid by the state, if defendant is acquitted or proved insolvent.

§ 3993. The fees specified in the preceding section, must, unless some other provision is made by law for their payment, be taxed as costs, and paid by the defendant on conviction, except such as have accrued against bail, jurors and witnesses, which must be paid by them unless excused by the court.

Coroner's fees.

§ 3994. The coroner is entitled to the following fees:

For each inquisition, to be paid by the county	$ 5 00
For summoning jury	2 00
Issue of each subpœna	25

Amended 39-60
p. 49

Each warrant of arrest.....$ 0 50
Each bond or undertaking returned to court..... 50

For money paid in the county treasury under the provisions of section 3771, five per cent. out of the amount of the same, if under five hundred dollars; if over that amount, two and one half per cent.

§ 3995. The fees specified in the preceding section, may be certified by the coroner to the clerk of the circuit court, and if any person is convicted of the murder or manslaughter of the person on whom the inquisition was held, must, unless other provision is made for their payment, be taxed as costs against such person, and when collected, paid to the coroner.

Solicitor's fees.

§ 3996. Solicitors are entitled to the following fees, to be taxed as costs, and collected from each defendant:

From each defendant convicted under sections 3249, 3254.....$ 100 00
From each defendant convicted under sections 3245, 3253, 3255, 3256..... 50 00
From each defendant convicted under sections 3243, 3251..... 40 00
From each defendant convicted under sections 3257, 3258, 3259, 3268, 3269, 3280, 3281, 3283, 3285, 3287, 3289..... 25 00
From each defendant convicted under sections 3273, 3274, 3297..... 20 00
From each defendant convicted under sections 3218, 3225, 3270, 3271, 3293..... 10 00
For each defendant convicted of a penitentiary offence, not included in any of the above sections.. 20 00
For each conviction of a slave for a capital offence, to be paid by the comptroller, by warrant on state treasury on certified copy of judgment, and certificate of sheriff that he was executed..... 10 00
For all other convictions..... 5 00

§ 3997. The attorney general is entitled on all criminal cases taken to the supreme court, in which judgment is rendered in favor of the state, to a fee of fifteen dollars, to be taxed as costs.

ARTICLE II.

General provisions.

Sec.
3998. If any duty performed by other officer, he entitled to the fee.
3999. Not to apply to chancellors, judges of the circuit or supreme court.
4000. Officers in state cases entitled to no fees not expressly allowed; and to none against the state or county unless expressly provided.
4001. No sheriff or jailor entitled to fees for custody or removal of prisoner who escapes.

SEC.
4002. This extends only to those having the custody of the prisoner.
4003. Fees to be paid by the state to be proved in open court and certified by the judge.
4004. Accounts so certified to be allowed by comptroller, &c.
4005. Provisions as to fee books and bills of costs.

When duty is performed by another officer.

§ 3998. Any of the duties in this title specified, when performed by other officers than those therein named, whose duty it is to perform the same, such officers are entitled to the same fees as if rendered by the officers in this title named, and to be collected and paid in the same manner.

Not to apply to judges, &c.

§ 3999. The provisions of the preceding section do not apply to judges of the supreme or circuit court, or chancellors.

No fees allowed not expressly authorized by law.

§ 4000. Officers are entitled to no other fees in criminal cases, except such as are expressly provided by law, and in no case are they entitled to payment from the state or county, unless expressly provided.

If prisoner escape no compensation for his custody.

§ 4001. No sheriff, jailor or other officer, charged with the custody of a prisoner, is entitled to any allowance for keeping or removing such prisoner from the state or county, if such prisoner escapes from the custody of such sheriff or jailor, or from the officer during his removal.

Only to officers having the custody of prisoner.

§ 4002. The provisions of the preceding section extend only to the sheriff, jailor, officer or guards having the custody or charge of such prisoner.

Proved in open court and certified by the judge.

§ 4003. The accounts due sheriffs and jailors to be paid by the state, must, unless some other provision is made by law, be presented to the judge and proven in open court, and the judge and solicitor must examine such accounts and examine witnesses if necessary, and if the charges are legal and duly proved, they must so certify on such accounts.

Account certified, passed by comptroller.

§ 4004. The accounts so certified, accompanied with the affidavit of the sheriff or jailor, that the same are correct, and that no part of the same have been paid, must be allowed by the comptroller if the charges against the state are proper and paid by warrant on the state treasury.

Fee books, bills of costs, &c.

§ 4005. The provisions of sections 3053, 3057, 3058, 3059, apply to this title, except so far as the same may be changed by law.

APPENDIX.

FORMS OF INDICTMENTS.

No. 1. § 3079.

The State of Alabama, } Circuit Court.
County. } Term 185 .

The grand jury of said county charge, that before the finding of this indictment A. B., C. D., and E. F., being unlawfully assembled, did demolish, pull down or destroy, or begin to demolish, pull down or destroy, a dwelling house, (or vessel, as the case may be,) against, &c.

No. 2. § 3080.

For murder.

That A. B. unlawfully, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, (or by striking him with an iron weight, or by throwing him from the top of a house, or by pushing him into the river, whereby he was drowned, or by whipping him to death with a cowhide, or some other kind of whip, or as the case may be,) against, &c.

No. 3. § 3084.

For manslaughter in the first degree.

That A. B. unlawfully and intentionally, but without malice, killed C. D. by stabbing him with a knife, (or striking him with a stick, or as the case may be,) against, &c.

No. 4. § 3085.

For manslaughter in the second degree.

That A. B. unlawfully, but without malice, or the intention to kill, killed C. D. by negligently throwing a brick, or stone, or slate, or piece of timber, from the top of a house, (or by negligently running over him with a horse, or by striking him with a stick, or as the case may be,) against, &c.

No. 5. § 3087.

That A. B. unlawfully killed C. D. in a sudden rencounter, by the use of a deadly weapon concealed before the commencement of the

fight, the said A. B. being the assailant, and his adversary having no deadly weapon drawn, against, &c.

No. 6. § 3086.

That A. B., while fighting at a militia muster, (or in the street of the city of Mobile, or at a public place,) used, or attempted to use, a pistol, gun, or air gun, (or as the case may be,) not in self defence, against, &c.

No. 7. § 3090.

For rape.

That A. B. forcibly ravished C. D., a female, against, &c.

No. 8. § 3092.

That A. B. did carnally know, or abuse in the attempt to carnally know, C. D., a female, under the age of ten years, against, &c.

No. 9. § 3093.

That A. B. did take C. D., a woman, unlawfully, and against her will, by menace, duress, or force, compel her to marry him, (or to marry one E, F., or to be defiled, as the case may be,) against, &c.

No. 10. § 3096.

That A. B. did take or decoy away C. D., a child under twelve years of age, with intent to detain or conceal the said C. D. from his (or her) parents, (or guardian, or person having the lawful charge of the said C. D., as the case may be,) against, &c.

No. 11. § 3097.

That A. B., while navigating a steam boat (or other vessel) for gain, willfully received on board of such steam boat (or other vessel) so many passengers, or such a quantity of loading, that by means thereof such steam boat (or other vessel) overset, (or sunk,) endangering the life of a human being by such oversetting, (or sinking,) against, &c.

No. 12. § 3099.

That A. B., being the engineer of a steamboat used for the conveyance of passengers or freight, and in charge of the machinery of such steam boat, or of some apparatus in said boat for the generation of steam, from ignorance or gross neglect, created, or allowed to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which the steam was generated, or some apparatus or machinery connected therewith, endangering human life thereby, against, &c.

No. 13. § 3101.

That A. B. unlawfully or forcibly inveigled, enticed, or confined

C. D., a free person, with intent to cause such person to be secretly confined or imprisoned in the state, against his will, (or with intent to sell such person for a slave, or to cause such person to be sent out of this state, against his will,) against, &c.

No. 14. § 3104.

For robbery.

That A. B. feloniously took a gold watch, (or as the case may be,) the property of C. D., from his person, and against his will, (or in his presence and against his will,) by violence to his person, or by putting him in such fear as unwillingly to part with the same, against, &c.

No. 15. § 3105.

Mayhem.

That A. B. unlawfully, maliciously, and intentionally cut out or disabled the tongue (or put out or destroyed an eye, or as the case may be) of C. D., against, &c.

No. 16. § 3106.

Assault with intent to murder.

That A. B. unlawfully, and with malice aforethought, did assault C. D., with the intent to murder him, against, &c.

No. 17. § 3106.

Assault with intent to ravish.

That A. B. did assault C. D., a female, with intent forcibly to ravish her, against, &c.

No. 18. § 3107.

That A. B. did assault and beat C. D. with a cowhide, stick or whip, having at the time in his possession a pistol, (or a bowie knife, or other deadly weapon, as the case may be,) with the intent to intimidate the said C. D., and prevent him from defending himself against, &c.

No. 19. § 3108.

That A. B. did abuse, whip, or beat C. D., upon an accusation that he had been guilty of stealing, or to force the said C. D. to disclose where he was on the night of the twenty-first August, one thousand eight hundred and fifty-two, (or to leave the county or the state, or as the case may be,) against, &c.

No. 20 § 3110.

That A. B. willfully injured the court house of Montgomery county, (or as the case may be,) a building belonging to said county, (or as the case may be,) by breaking the windows thereof; or by breaking the door, (or as the case may be,) against, &c.

No. 21. § 3114.

That A. B. unlawfully and maliciously killed (or disabled,) a horse, (or as the case may be,) the property of C. D., against, &c.

No. 22. § 3114.

That A. B. unlawfully and maliciously injured (or destroyed,) a carriage, (or as the case may be,) belonging to C. D., of some value, against, &c.

No. 23. § 3120.

That A. B. unlawfully and willfully destroyed (or removed,) a mile stone, (or post, board, or guide board, as the case may be,) set upon a road (or highway,) leading from, (describe the road or highway,) against, &c.

No. 24. § 3125.

That A. B. willfully and wantonly poisoned a spring (or fountain, or well, or reservoir, as the case may be,) of water, in the yard of C. D., (or in the public square in the town of Tuskegee, or near the house of C. D., or on the road leading from —— to ——, or as the case may be,) against, &c.

No. 25. § 3126.

That A. B. did harbor or conceal a runaway slave named Joe, the property of C. D., (or as the case may be,) knowing such slave to be a runaway, against, &c.

No. 26. § 3127.

That A. B. did knowingly aid a slave named Joe, the property of C. D., to runaway, against, &c.

No. 27. § 3128.

That A. B. persuaded a slave named Fed, the property of C. D., to leave the service of his master, the said C. D., with the intent to go to a state or country where such slave might enjoy freedom, against, &c.

No. 28. § 3128.

That A. B. harbored or concealed a slave named Fed, the property of C. D., such slave being at the time a runaway, and having the intention to go to a state or country where he might enjoy freedom, and such intention being known to the said A. B. at the time he harbored or concealed such slave, against, &c.

No. 29. § 3129.

That A. B. forged or fabricated a paper in writing, for the purpose of enabling a slave named Fed, the property of C. D., to escape or runaway from his master, (or to pass as a free person, or to leave this state, as the case may be,) against, &c.

No. 30. § 3130.

That A. B. inveiged, stole, carried, or enticed away, a slave named Tom, the property of C. D., with the intent to convert such slave to his own use, or to the use of one E. F., or to enable such slave to reach a state or country where he would enjoy freedom, against, &c.

No. 31. § 3131.

That A. B. did make a conveyance of property to one C. D., (or as the case may be,) with the intent to hinder, delay, or defraud his creditors, against, &c.

No. 32. § 3132.

That A. B. did remove a certain slave named Joe, (or other personal property, as the case may be,) with the intent to convey such slave (or other property, as the case may be,) out of the state, for the purpose of hindering, delaying, or defrauding one E. F., who had a claim to such slave, (or other property, as the case may be,) under a written instrument, of which the said defendant had a knowledge.

No. 33. § 3139.

That A. B. feloniously marked or branded an unmarked horse, (or mare, or colt, or mule, or as the case may be,) the property of C. D., (or as the case may be,) against, &c.

No. 34. § 3141.

That A. B. falsely personated C. D., and in such assumed character received one hundred dollars, (or as the case may be,) intended to have been delivered to the said C. D., against, &c.

No. 35. 3142.

That A. B. did falsely pretend to C. D., with intent to defraud, that he had packed and ready for delivery, ten bales of cotton, (or as the case may be,) and by means of such false pretence, obtained from the said C. D. ten pieces of cloth, &c., (or as the case may be,) against, &c.

No. 36. § 3143.

That A. B., an officer, (or an agent, or clerk, as the case may be,) of the bank of Mobile, (or as the case may be,) an incorporated company, not being an apprentice, or under the age of eighteen years, embezzled or fraudulently converted to his own use, money, to about the amount of five hundred dollars, promisory notes to about the amount of five hundred dollars, &c., (or other property, as the case may be,) which came into his possession by virtue of his employment, against, &c.

No. 37. § 3145.

That A. B., a private banker, (or commission merchant, or factor, or broker, or attorney, or agent, as the case may be,) sold or disposed of

one thousand dollars of funds in the city of New York, the property of C. D., and embezzled or fraudulently converted to his own use the proceeds thereof, or some portion of the same, against, &c.

No. 38. § 3448.

That A. B., treasurer of the state of Alabama, (or employed in the office of the treasurer of the state of Alabama, as the case may be,) embezzled or fraudulently converted to his own use, (or fraudulently secreted, with intent to convert to his own use,) five hundred dollars, (or as the case may be,) belonging to said state, against, &c.

No 39. § 3151.

That A. B. altered, by erasing a material part thereof, (or as the case may be, or forged, or counterfeited, as the case may be) an instrument being, (or purporting to be) a bank bill, (or as the case may be) for one hundred dollars, (or as the case may be) issued, or purporting to be issued by the Bank of Mobile, (or as the case may be) an incorporated bank (or banking company as the case may be) of this state (or any other state, or as the case may be) with intent to defraud, &c., against, &c.

No. 40. § 3155.

That A. B. forged, (or counterfeited, or falsely altered, by erasing a material part thereof, (as the case may be) an instrument purporting to be (or being) the last will of C. D., (or as the case may be) devising certain real property, (or as the case may be) with intent to defraud, &c., against, &c.

No. 41. § 3155.

That A. B. forged a certificate, purporting to have been made by C. D., an officer duly authorized to make such certificate, of the acknowledgment of E. F. of the execution by him of a conveyance to G. H., of certain real property which by law might have been recorded, with intent to defraud, &c.

No. 42. § 3159.

That A. B., an officer duly authorized to take the proof and acknowledgments of conveyances of real and personal property, willfully certified that a conveyance of C. D. to E. F., of certain personal property, was duly acknowledged before him by the said C. D., on the —— day of ——, in the year ——, when no such acknowledgment was made on that day, with the intent to injure or defraud, or to enable another to injure or defraud, against, &c.

No. 43. § 3160.

That A. B. counterfeited a silver coin of the Republic of Mexico, called a dollar, which was at the time current by law, usage, and custom, in this state, against, &c.

No. 44. § 3161.

That A. B. had in his possession a counterfeit of a gold coin of the United States, called an eagle, which was at the time current in this state, knowing the same to be counterfeit; with intent to defraud or injure, by uttering the same, as true or false, or by causing the same to be so uttered, against, &c.

No. 45. § 3170.

That A. B. feloniously took and carried away from a dwelling house, (or store house, smoke house, &c., as the case may be) a cloak, the personal property of C. D., of the value of ten dollars, against, &c.

No. 46. § 3171.

That A. B. feloniously took and carried away from a building on fire, a silver watch, the personal property of C. D. (or of a person whose name is unknown to the grand jury) of the value of twenty dollars, against, &c.

No. 47. § 3172.

That A. B. feloniously took and carried away from the person of C. D., one ten dollar bill, on the Bank of Mobile, the personal property of the said C. D., of the value of ten dollars, against, &c.

No. 48. § 3173.

That A. B. feloniously took and carried away a bag of cotton, the personal property of C. D., of the value of more than twenty dollars, against, &c.

No. 49. § 3174.

That A. B. feloniously took and carried away a promissory note on C. D. for twenty dollars, the personal property of E. F., of the value of twenty dollars, or under, against, &c.

No. 50. § 3176.

That A. B. took, or destroyed a deed, (or conveyance in writing, as the case may be), belonging to C. D., conveying lands, (or personal property, as the case may be), with intent to injure or defraud, against, &c.

No. 51. § 3183.

For burglary.

That A. B. broke into and entered the dwelling house of C. D., (or a building within the curtilage of the dwelling house of C. D., but not forming part thereof; or the shop of E. F., &c.), with intent to steal (or to commit any felony, describing it generally.)

No. 52. § 3185.

For arson in the first degree.

That A. B. willfully set fire to, or burned in the night time, a

dwelling house (or a house adjoining the dwelling house) of C. D., in which dwelling house there was at the time a human being, against, &c.

No. 53. § 3188.

For arson in the second degree.

That A. B. willfully set fire to, or burned in the day time, an inhabited dwelling house of C. D., (or of a person whose name is unknown to the grand jury,) against, &c.

No. 54. § 3197.

For perjury.

That A. B., on an application for a continuance in a civil action in the circuit court of Mobile county, in which one C. D. was plaintiff and the said A. B. defendant, being duly sworn by the clerk of such court, having authority to administer such oath, swore falsely, that he believed one E. F., on the trial of such case, would prove (stating the facts) the matters so sworn to, being material, and the oath in relation to such matters willfully and corruptly false, against, &c.

No. 55. § 3197.

For perjury.

That A. B., on his examination as a witness, duly sworn to testify on the trial of a civil action, in the circuit court of Bibb county, between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, testified falsely, that (stating the facts) the matters so testified being material, and the testimony willfully and corruptly false, against, &c.

No. 56. § 3206.

That A. B., while sheriff of said county, summoned one C. D. to serve as a tales juror, at the fall term of the circuit court held for said county, in the year 1852, with the intent to produce a result favorable to one E. F., the defendant in an indictment for assault and battery (or as the case may be) pending in said court, against, &c.

No. 57. § 3210.

That A. B., while sheriff of said county, and having the legal custody of C. D., charged with (or convicted of) retailing, (or other indictable offence, describing it in general terms,) voluntarily permitted the said C. D. to escape, against, &c.

No. 58. § 3211.

That A. B., being a constable, (or jailor, or deputy sheriff, or as the case may be,) of said county, negligently suffered one C. D., in his custody, charged with, (or convicted of) retailing, (or other indictable offence, describing it in general terms,) to escape, against, &c.

No. 59. § 3213.

That A. B., being jailor of said county, (or other officer, describing the office by name generally), willfully refused to receive into his custody C. D., lawfully committed thereto on the charge (or conviction) of assault and battery, (or as the case may be), against, &c.

No. 60. § 3214.

That A. B. conveyed into the jail of Montgomery county, a file, (or as the case may be,) an instrument useful to aid a prisoner to escape therefrom, with the intent to facilitate the escape of one E. F., a prisoner, lawfully committed to or detained in such jail, on the charge (or conviction) of burglary, (or other felony, describing it in general terms,) against, &c.

No. 61. § 3218.

That A. B. did knowingly and willfully oppose or resist C. D., a deputy sheriff of said county, in attempting to serve or execute a writ of execution, called a fieri facias, issued by the clerk of the circuit court of said county, (or as the case may be, describing the process generally,) against, &c.

No. 62. § 3219.

That A. B., the master of (or in charge of) a slave named Jack, guilty of (or legally charged with) the commission of murder, (or other capital offence, describing it in general terms,) concealed or carried said slave away (or caused him to be concealed or carried away) with the intent to prevent said slave from being brought to justice, &c.

No. 63. § 3220.

That A. B., knowing that one C. D. had been guilty of the commission of grand larceny (or other felony, describing it in general terms,) took money or other property, or agreed to take money or property, from the said C. D. (or one E. F., as the case may be) to compound or conceal such felony, or to abstain from any prosecution therefor, against, &c.

No. 64. §. 3225.

That A. B., being clerk of the circuit court of said county, knowingly took from C. D. one dollar, (or as the case may be,) for the issue of an execution, (or as the case may be,) being a greater fee than was by law allowed for such service, against, &c.

No. 65. § 3227.

That A. B., not occupying the legitimate relation of parent, child, brother, sister, husband or wife, to one C. D., who had committed a felony, concealed the said C. D. (or furnished him with a horse or gave him other aid, as the case may be) after he had committed said offence, with the knowledge that he had committed the same, and to enable him to avoid or escape from arrest, trial, conviction or punishment, against, &c.

No. 66. § 3231.

That A. B., a man, did live with C. D., a woman, in a state of adultery or fornication, against, &c.

No. 67. § 3232.

That A. B., having a wife then living, unlawfully married one C. D., against, &c.

No. 68. § 3236.

That A. B. removed the dead body of C. D. from the grave, for the purpose of dissection, sale or wantonness, against, &c.

No. 69. § 3243.

That A. B. played at a game with cards or dice, or at some device, or substitute therefor, at a tavern, inn, store house for retailing spirituous liquors, or house or place where spirituous liquor was at the time retailed or given away, or at a public house, high-way or some other public place, or at an out house, where people resort, against, &c.

No. 70. § 3249.

That A. B. kept, or exhibited a gaming table, for gaming, or was interested or concerned in the keeping or exhibition thereof, against, &c.

No. 71. § 3251.

That A. B. bet at a gaming table for gaming, against, &c.

No. 72. § 3256.

That A. B. willfully interrupted or disturbed an assemblage of people, met for religious worship, by noise, profane discourse, rude or indecent behavior, or by fighting at or near the place of worship, (or as the case may be,) against, &c.

No. 73. § 3254.

That A. B. set up, or was concerned in setting up, or carrying on a lottery, without the legislative authority of this state, against, &c.

No. 74. § 3258.

That A. B. fraudulently packed, or baled cotton, against, &c.

No. 75. § 3259.

That A. B. fraudulently exhibited a false sample of cotton, (or sugar or any other article, as the case may be,) by means whereof one C. D. was injured, against, &c.

No. 76. § 3260.

That A. B. willfully cut, tore or opened, a bale of cotton without

the direction or consent of the owner, agent or consignee of such cotton, against, &c.

No. 77. § 3268.

That A. B. was an individual member of a private corporation, known as the ——, and that said corporation, while the said A. B. was an individual member thereof, without authority of law, emitted or circulated paper to answer the purposes of money, or for general circulation, against, &c.

No. 78. § 3271.

That A. B. passed or circulated a bank bill of a less denomination than five dollars, not issued under the authority of this state, against, &c.

No. 79. § 3274.

That A. B. carried concealed about his person, a pistol, against, &c.

No. 80. § 3280.

That A. B., a licensed retailer, (or person keeping vinous, fermented or spirituous liquors for sale,) sold, gave or delivered to one C. D., a student of a college, (or pupil of a school, or academy, or to E. F. for the use of C. D., a pupil, &c., knowing the use for which it was intended,) vinous, fermented or spirituous liquor, without the consent of the parent or guardian, or person having charge of such student, (or pupil,) against, &c.

No. 81. § 3283.

That A. B. did sell, give or deliver to a slave, named Joe, belonging to C. D., vinous or spirituous liquor, without an order in writing, signed by the overseer or master of such slave, specifying the quantity to be sold, given or delivered, against, &c.

No. 82. § 3289.

That A. B. employed, or knowingly permitted one Tom, a slave, belonging to C. D., (or E. F., a free person of color,) to sample cotton, against, &c.

No. 83.

For an assault and battery.

That A. B. assaulted and beat C. D., against, &c.

No. 84.

For an affray.

That A. B. and C. D. did fight together in a public place, against, &c.

RULES OF COURT AND PRACTICE,

ADOPTED BY

THE SUPREME COURT OF ALABAMA.

GENERAL RULES.

Appearances

1. The clerk of every court of record in the state, shall keep in court, in term time, and in his office in vacation, a book to be called the "Book of Appearances." Any attorney or solicitor desiring to appear in any civil cause, shall make in said book, or cause to be made therein by the clerk, an entry of his name, stating the cause in which he appears, (and if there be several of the same name, its number or other mark of identity,) the party or person for whom he appears, and the date of such entry. Such entry shall be considered an appearance of record. The counsel whose name shall be so first entered, shall be considered the leading counsel in the cause, for the party or person for whom he so appears, until he abandon the cause, and then the counsel whose appearance shall be next in date, and so on. Such notices, &c., as are authorized to be served on the attorney of a party, shall be served on his leading counsel.*

Appearances

2. No one shall be permitted to appear in a cause as counsel or attorney, unless he has been employed therein, and his appearance has been entered as aforesaid, or unless he represent other counsel whose appearance has been so entered, or may have the special leave of the court.*

Abandonment.

3. Counsel shall be considered as having abandoned a cause by entry to that effect, by failing, at two successive terms of the court, to appear or be represented therein, by removal from the state, by quitting the practice, or by death; in any of which, and in such other cases as the court may direct, the clerk may enter such abandonment on the book of appearances.*

Fees.

4. The attorney's fee, taxed in the bill of costs, shall be taxed in the name of the leading counsel, at the time of final trial.*

Assigning errors.

5. All declarations, pleas, bills, answers, assignments of errors, joinders in error, briefs, &c., must be signed by counsel where counsel is employed.*

---

* Adopted January term, 1838.

Attorneys may take papers from clerk's and registers' offices.

6. It shall be the duty of the several clerks and registers of courts in vacation, to permit the attorney or solicitor of record, for either party, in any suit pending in their courts, to take from the office the papers in any cause, and retain them for the space of twenty-four hours at any one time, executing a receipt therefor. The papers not to be carried beyond the limits of the town in which the office of the register or clerk is located; and the clerk or register shall at all times have access to them.*

RULES OF PRACTICE IN THE SUPREME COURT.

Assigning errors.

1. In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. The words "there is no error in the record," shall be a sufficient joinder in error.

Assigning errors.

2. On application to the court, additional assignments may be filed at any time before joinder, but after joinder, such only as will affect the merits of the controversy.

Trial of causes.

3. Each cause (not being within the rule concerning delay cases, nor the rule concerning criminal cases,) must be called and tried according to its order on the docket, unless, for good cause shown, it be continued or passed over.

Authorities.

4. A list of the authorities to be used in the argument of any cause, shall, if applied for, be furnished to the counsel for the adverse party one day before the trial; otherwise, they shall not be read or commented on in the argument on behalf of the party so in default, but they may be cited.

Authority.

5. No authority which was not read in the opening argument shall be read in the conclusion, unless by leave of the court, or to rebut authority introduced by the adverse counsel.

Roll of attorneys.

6. The clerk shall keep a list or roll of all attorneys of this court, entering their names in the order in which they were admitted.

Special motions.

7. Special motions shall be heard on each Thursday of the term; and for this purpose, the clerk shall call over the names of the attorneys, beginning with the attorney general, and proceeding with the others according to their order on the roll.

Motions.

8. The clerk shall keep a motion docket, in which shall be entered all motions for argument which are not ex parte, or of course. In such entry, the nature and particular grounds of the motion shall be designated, and, at least one day before the hearing of the motion, the entry shall be shown to the counsel for the adverse party, or he shall have such written notice as will enable him to refer to it.

* Adopted June term, 1842.

Criminal causes.

9. On the second Thursday of each term, after the motions have been heard, the criminal causes shall be called, and shall be in order until all are disposed of; but the court, for sufficient reason shown, may postpone any such cause until another day. In such cases, the party seeking to reverse shall assign errors and furnish briefs.

Delay cases.

10. On any motion day, if the counsel for the defendant in error, or appellee, state that it is his belief that the case is brought into this court merely for delay, the record shall be submitted to the court without argument on either side. If the court, on examining the record, consider it a delay case, the judgment shall be affirmed; but if it appear to be doubtful or difficult, or if, when so offered to be submitted, or at any time during the term, the counsel for the plaintiff in error, or appellant, state to the court that it is his opinion that, on more full examination, the judgment will be reversed or corrected, it shall not be so affirmed; or, if such judgment of affirmance has been entered, it shall be set aside, and the case shall stand over for argument in its regular order.

Division of court.

11. In cases where the judges are equally divided in their opinions, the judgment of the court below shall be affirmed; but if the judges whose opinions shall be against affirming so request, the case shall be retained for one term only.

Certiorari.

12. A certiorari to perfect or to bring up a complete record, may be awarded at the first term, on motion of either party, if its object be to sustain a judgment, without a showing; but if to reverse a judgment, a sufficient showing must be made.

Records.

13. The clerk may permit either of the attorneys concerned in a cause to take the record and papers thereof from the clerk's office, to be returned at such time as by the rules of the office may be directed.

Students.

14. The public examination for licenses to practice law, shall be on the first Tuesday, and on each Saturday of the term.

Private agreements.

15. No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing, and signed by the party to be bound thereby.

Briefs.

16. The counsel for the plaintiff in error or appellant, one day at least before the trial, shall furnish to the court three briefs, succinctly stating the material facts out of which the points in controversy arise, and referring to the authorities on which he relies; and shall not be heard in argument unless such briefs be furnished.

Transcripts, size.

17. After the first day of January next, all transcripts of records sent up to this court shall be on a paper of uniform size, (according to a sample to be furnished by the clerk of this court,) with a blank margin of an inch and a half along the side of each page where the leaves unite.

18. No original bill of exceptions or paper, read or offered

Copies of papers. in evidence, shall be sent to this court. Copies of bills of exceptions, and of papers therein referred to, shall be inserted in their proper places in the transcripts.

Index of. 19. The pages of the transcripts shall be numbered. Each transcript shall be prefaced by an index to its contents, specifying the pages at which the various matters, (as the writ, declaration, pleas, bill of exceptions, judgment, bill in chancery, answer of each defendant, deposition of each witness, each interlocutory order or decree, final decree, &c., &c.,) are to be found. Marginal references to the several matters, as above, shall be made throughout the transcript.

Clerk's seal. 20. The several sheets of each transcript shall be so stitched together that every part can conveniently be read. The clerk's seal shall be so placed across the fastening of the cord with which the sheets are stitched, that no part of the transcript can be detached, without separating the seal, cord, or paper. No paper attached by wafer, paste, nor in any other manner than as above, shall be considered as part of the transcript.

Copy of bond, and citation. 21. A copy of the bond for prosecuting the writ of error, or appeal, (when such bond is given,) shall be sent with the transcript; such copy, the writ of error, citation, &c., may be sent detached from the transcript. When the citation shall not be sent, the clerk shall certify whether a citation issued or not.

Transcript. 22. The clerk of this court shall transmit, by mail or otherwise, to the clerks of the several circuit and county courts, a copy of this rule, and a sample, as required thereby; and no transcript shall be here filed, unless it conform to the first, second, and third clauses of this rule, as above stated.

Transcript. 23. As the practice of this court, in relation to the filing of transcripts, and the setting aside of judgments rendered on certificates and citations, seems to be but imperfectly understood, the court will state, for the information of the bar, the rules, which will hereafter be rigidly adhered to:*

Transcript. 24. 1st. If the transcript of the record is not delivered to the clerk, and errors assigned within the first three days of the term, the defendant in error is entitled, at any time before the record is filed, and the errors assigned, to his judgment of affirmance, on production of the proper certificate or citation.*

Transcript. 25. 2d. Whenever a judgment shall be taken before a call of the division, to which the case properly belongs, it will be deemed a sufficient cause to reinstate the case, and to set aside the judgment, if the transcript is filed at any time before the first motion day, after the call of the division.*

Transcript. 26. 3d. In all other cases where a motion is submitted to set aside a judgment rendered on certificate or citation, affi-

* Adopted January term, 1838.—It is ordered by this court that the rules of court collected and published in the fifth volume of Stewart & Porter's Reports, and as there respectively numbered and arranged, be and the same are hereby adopted as rules of practice in the supreme, circuit, and county courts of the state of Alabama.

davits must be produced showing satisfactory reasons why the transcript was not filed within the first three days after the call of the division to which the case belongs. If the transcript offered is defective, the affidavits must show, either that application has been made for a correct transcript, or that there was not sufficient time, after the defect was discovered, to procure one before the adjournment of the court. And in either event, the deficient matter must be stated with sufficient certainty to enable the defendant in error to admit the existence of the same, and to proceed as if the record was complete.*

Advisement.

27. In all cases which shall be held under advisement, it shall be the duty of the clerk to furnish two copies of the record, or such parts thereof as may be required by the court, and that the costs of the same be taxed in the bill of costs.*

Where no proceedings at return.

28. In all cases where writs of error, or appeals, shall have been allowed, returnable to this court, if at the proper return term, no proceedings are had in the cause, and the same be neither affirmed, reversed, dismissed nor continued, the defendant in error, or appellee, shall be entitled to proceed to execution in the court below, as if no writ of error or appeal had been allowed, upon filing with the clerk below the certificate of the clerk of this court that no proceedings have been had in such cause at the return term. And the clerk of this court shall issue such certificate, on the application of any party requiring the same, certifying that no proceedings have been had in such cause as the applicant shall name, when such is the fact: Provided, That where such certificate shall have been applied for and issued from this court, no affirmance on certificate from the court below at any after term shall be allowed, unless the certificate of no proceedings obtained from this court be returned, with an affidavit that the same has not been used, or other satisfactory evidence thereof.†

Students.

29. This court has hitherto been very indulgent in admitting to its bar applicants for license. That none may hereafter present himself for examination who is not well skilled in his profession, the court deems it proper to declare, that, in future, examinations conducted under its eye will be thorough, and well calculated to test the extent of the applicant's professional attainments, and where these are defective, the court will not hesitate to withhold a license.‡

---

* Adopted Jan. term, 1838. † Adopted Jan. term, 1839.
‡ Adopted June term, 1839.

RULES OF PRACTICE IN CIRCUIT AND COUNTY COURTS.

Appearances

1. The clerk shall enter all causes on the appearance docket, according to the order in which the writs were received by the sheriff.*

Docket.

2. He shall keep a separate docket in which shall be entered all motions made during the term, (not incidental to the cause,) in the order of time in which they are made, and they shall be called in the same order.

Order book.

3. He shall keep on his table when the court is sitting, and at all other times in his office, a memorandum book, in which the attorneys may respectively enter precipes and other direcrections to him.

Executions.

4. On every final judgment and decree rendered during the term, (unless the party to be benefited thereby, or his attorney, shall, in writing, otherwise direct,) the clerk shall issue execution, as soon after the adjournment as the law will permit.

Attorneys.

5. An attorney may be security for costs, but shall not be bail for his client, either in a civil or a criminal case.

Scire facias.

6. To every scire facias returned "made known," the defendant shall plead within the first two days of the term to which the same is returned, the plaintiff shall reply on the day next thereafter, and so on from day to day, until issue in fact or in law be joined; but either party may demand a trial at the return term, although the court may not continue in session three days.

Oyer.

7. When oyer of any instrument which is the foundation of the action, is demanded, and notice thereof given to the attorney for the plaintiff, oyer shall be granted within two days thereafter; unless the instrument be out of the possession of the plaintiff, and a subpœna duces tecum be necessary, in which case oyer shall be granted on the return of the subpœna, duly executed; and in default thereof, in either case, judgment of non pros shall be entered. When oyer of letters testamentary or letters of administration, is demanded, it shall be granted on or before the first day of the term next after the return of the writ, but the trial shall not, on that account, be delayed.

Production of papers.

8. When the action is on any instrument purporting to have been signed by the defendant, and, within the time prescribed for pleading, he shall give notice to produce it, it shall, within one day thereafter, be produced for his inspection. In default thereof, non-suit may be entered, unless sufficient excuse be shown.

Defaults.

9. Defaults may be entered on the docket in vacation, which shall relate to the preceding term, and advantage thereof may be claimed at the next term.

---

* The rules from 1 to 23 inclusive, were adopted by the supreme court at January Term, 1838.

10. After a default has been duly entered, the party claiming the benefit thereof shall not be bound to receive any plea or pleading of the party so in default. Defaults.

11. On timely application, on affidavit showing merits and sufficient matter of excuse, a default may be set aside on such terms as the court may impose. Defaults.

12. No plea in abatement shall be received if objected to, unless by the indorsement of the clerk it appear to have been filed within the time allowed for pleading. Plea in abatement.

13. A motion to quash an attachment, appeal or process must be made at the first term at which it can be made, and not afterwards. Attachment.

14. No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing and signed by the party to be bound thereby. Private agreement.

15. The docket of civil causes for trial shall be called absolutely on the first day of the term, unless the presiding judge shall order otherwise. Each cause shall be taken up according to its priority on the docket, and tried or continued. If passed over, it shall not be called again during the term until the other causes for trial have been disposed of. Trial of causes.

16. The party applying for a continuance of any civil action, must state in the affidavit the names and places of residence of the absent witness or witnesses; what diligence he has used to obtain his or their testimony, and what he expects to prove thereby. If the adverse party will admit what, it is so alleged, such absent witness will swear, the cause shall not be continued by reason of the absence of such testimony. After the first continuance, such other showing must be made, and such terms may be imposed, as to the court shall seem proper. Continuance.

17. No cause shall be continued twice in succession by consent of parties. Continuance.

18. On trial, only one counsel on each side shall examine a witness. Examination of witnesses.

19. If the counsel for the plaintiff waives the right of opening the argument, he shall not have the right of concluding. Argument.

20. Whenever a change of venue shall be awarded, the clerk shall subjoin to the original papers, a transcript of all entries relating to the suit; and by some discreet person send the whole inclosed under seal, to the clerk of the court to which the case is ordered to be removed. Such messenger, on producing the receipt of the clerk to whom the papers, &c., have been so sent, shall be entitled to receive from the clerk by whom he was employed, five cents per mile for going and for returning from the one clerk's office to the other. The clerk shall not be bound to transfer said papers, &c., until the party obtaining the change of venue has deposited with him a sum sufficient to pay the compensation of the messenger aforesaid. Change of venue.

Motions. 21. A particular day in each term shall be set apart for hearing motions, but they may be heard at an earlier day by leave of the court.

New trials, &c. 22. Reasons in arrest of judgment, and reason for new trial, and the affidavits in support thereof, if any are relied on, shall be filed with the clerk, and notice thereof be given to the adverse party, one day before the argument. If the cause is tried on the last day of the term, the notice shall be given when the motion is entered. The party making such motion is entitled to the opening and conclusion of the argument. All such motions not acted on, or continued by order of the court, are to be considered as discharged of course, on the last day of the term.

Appeals. 23. In cases brought from a county court into a circuit court, by writ of error or appeal, the rules of the supreme court, so far as applicable, shall be in force in the circuit court.

Ejectment. 24. In every action of ejectment, the defendant shall specify in the consent rule, for what premises he intends to defend, and shall consent in such rule, to confess upon the trial that the defendant, (if he defends as tenant, or in case he defends as landlord, that his tenant,) was, at the time of the service of the declaration, in possession of such premises, and that if, upon the trial, the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the said defendant, then no costs shall be allowed for not further prosecuting the same, but the said defendant shall pay costs to the plaintiff, in that case to be taxed.

Ejectment. 25. Where several actions of ejectment have been commenced for the same premises on the demises of different lessors, it may be lawful for the plaintiff in either of the cases, during the pendency of his suit, to serve a copy of his declaration on the lessors of the plaintiff or his attorney in the other case or cases, with a notice of the pendency of his action, and to require him or them to defend against the same. And in the event of a recovery by the plaintiff giving the notice, it shall not be lawful for the plaintiff notified as aforesaid, to proceed in the action for the recovery of the tenements sued for, but only for costs and damages: Provided, That sixty days' notice shall be given before the said plaintiff shall be required to join in the consent rule.*

Ejectment. 26. Whenever a recovery has been had in any action of ejectment, and there has been, and then is, pending, an action for the recovery of the same tenements, which action was commenced before the recovery of the lessors of the plaintiff in the former suit, it shall be lawful for the plaintiff in the suit pending, to serve a copy of his declaration upon the parties in possession, or who claim interest under the recovery as aforesaid, notifying the said parties of the pendency of the action, and requiring them to defend against the same.

---

* Adopted by the supreme court at June Term, 1842.

And the parties so notified, may defend with, or in lieu of the tenants in possession: Provided, That the notice hereby contemplated shall be given sixty days before the trial of the cause.*

Ejectment.

27. After a recovery by a plaintiff in any action of ejectment as aforesaid, it shall be lawful for the circuit court to admit his lessors to defend in any action of ejectment which may be pending at the time of his recovery, upon a motion to the court for this purpose. And it is made the duty of the court to set forth in the order admitting parties under either of these rules, the facts that entitle them to admission.*

Cause remanded not continued as matter of course.

28. Where a judgment is reversed, either by the circuit or supreme court, and the cause remanded, the case shall not be continued as a matter of course, at the next succeeding term of the court to which it is sent back, but the party desiring a continuance shall show cause therefor, as in other cases.†

RULES FOR THE REGULATION OF THE PRACTICE IN CHANCERY.

Appearance docket.

‡ 1. The register of each court of chancery, shall enter upon his appearance docket, every cause with the name of each complainant, and each defendant—and shall enter upon the same docket, the day on which it was filed—and the return of the sheriff made upon the subpœnas. This docket shall be carefully preserved as a record of the court.

Subpœna to be attached to original bill.

2. There shall be attached to each original bill a subpœna, upon which the register shall enter copies of all the returns made by the sheriff.

Subpœna; how served on infants.

3. Subpœnas issuing against infant defendants may be served upon their parents or either of them, if in life, and in case of death, upon the general guardian of such infant; and if there be none, then, if the infant is over fourteen years of age, upon the infant personally; and if under fourteen years, then upon such person as may have the maintenance and charge of such infant; and if any case not provided for by this or some other rule, or by statute, shall occur, and proof be made before the chancellor, he may direct the mode of service, or appoint a guardian ad litem for such infant.

Femes covert; how made defendants.

4. Femes covert may be made defendants by service of subpœna upon their husbands, if residents, or by order of publication, if non-residents; and the order of publication shall be transmitted to the husband in all cases, except where the separate estate of the wife shall be the object of the bill, in which case the subpœna shall be served on her, and the order of publication transmitted to her.

---

* Adopted by the supreme court at June Term, 1842.

† Adopted January Term, 1841.

‡ All the rules from 1 to 39 inclusive, were adopted by the supreme court at the January Term of 1841.

Corporations; how made defendants.

5. Domestic corporations shall be made defendants by a service of subpœna on the principal officer of such corporation. Foreign corporations shall be made parties by order of publication, a copy whereof shall be sent to the principal officer of the same—after the service of process in form aforesaid, it shall be lawful to enter a decree pro confesso, for want of answer, or an order for a distringas may be obtained, to compel an answer against any domestic corporation.

Book of orders, &c. Solicitor to draw out all rules, orders, or decrees applied for.

6. The register shall keep a book in which shall be entered all rules and orders which shall be taken in vacation. The solicitor of the party applying for any rule, or order, or decree, shall draw the same out with care, describing the cause, the date of the application and the notice which has been given to the adverse party; and if the decree, order, or rule shall be granted, the register shall cause the same to be transcribed on the said book—which book shall be one of the records of the court.

Time of application for rules, orders, decrees, &c.

7. Rules, orders and decrees may be applied for every Monday, except in those cases in which a notice to the adverse party may be necessary—which shall only be applied for on the first Monday of every month, unless a special showing be made before the register for such order, decree or rule, at a previous date: Provided, If the register cannot get through business on the days aforesaid, he may continue the applications from day to day until finished.

Register may make certain orders if adverse party be served with five days' notice.

8. The register shall have power to make orders allowing the amendment of bills, to allow complainants to file supplemental bills, to revive suits by bills of revivor, to allow the examination of witnesses de bene esse, to allow the examination of witnesses, and to make orders for the publication of testimony. These orders shall only be made upon a notice to the adverse party, setting forth the nature of the order applied for, which shall be served upon him, or his solicitor, at least five days before the day at which the application shall be made, and a copy thereof shall be filed with the register.

Applications for orders to be made in writing.

9. All applications to the register for orders or decrees, when a notice is required, shall be made in writing, setting forth the grounds on which the same is required; and all orders and decrees entered before him, shall be subject to rejection or correction, at the next term of the court before the chancellor.

Decree, pro confesso, may be entered in vacation.

10. A decree pro confesso, may be entered in vacation, for want of an answer, against a non-resident defendant, after the time for answering has expired, and after such decree the complainants may proceed to take testimony ex parte.

Replication.

11. In all cases a replication shall be considered as filed, unless the record shall plainly disclose that the cause is set down for a hearing on bill and answer by consent.

Amendments; how made.

12. Amendments to bills and answers, shall be made on a separate piece of paper, unless the amendment be of a brief

or unimportant character when it may be made by an interlineation or erasure, with ink of a different color from the body of the bill or answer; and the amendment shall be made in shch manner, that it may be ascertained in what it consists.

Amendments; when served.

13. Amendments to bills shall be served upon the solicitor of the adverse party, within sixty days after the same shall be filed, or they shall be considered as waived; and the same shall be accompanied with a notice that an additional answer is required, if such is the fact, or if no answer has been filed, or the defendant shall deem an additional answer necessary, he shall have thirty days from the service to file the same, and in case of a failure to file an answer in that time, the complainant may proceed as upon a default—and may cause a decree, pro confesso, to be entered in the office of the register.

Defendant may file answer in thirty days.

Bills, with injunctions, to be filed, and conditions complied with in twenty days after fiat.

14. Bills upon which injunctions shall be ordered, shall be filed, and the conditions imposed upon the complainant shall be complied with, within twenty days after the date of the fiat, or the order shall be inoperative.

Suits which survive.

15. When a suit survives, either in favor of any personal representative of a decedent, or against a personal representative from whom no answer is required, it shall not be necessary to file a bill of revivor, but, upon an application to the register, the party may obtain a scire facias in favor of, or directed to such personal representative, which being served upon the adverse parties, it shall be lawful for the register to enter an order of revival, unless cause be shown to the contrary, by plea filed with the register within thirty days after the service of such scire facias.

Suits of feme sole not to abate by intermarriage. Provided, &c.

16. No suit instituted by a feme sole, or in which she shall be a complainant, shall abate by intermarriage: Provided, That at or before the second term of the court after such intermarriage, the husband shall make himself a party—which may be done by a motion to the courts.

Order of publication to state facts, and objects of bill.

17. All orders of publication shall succinctly state the facts and objects of the bill. And whenever an injunction shall be granted, which is to operate upon a non-resident who is a party to the suit, the order of publication shall contain a recital of the matter on which the injunction is to operate, which shall be published according to the rules herein prescribed, by which non-residents are made parties to suits, and the operation of the injunction shall relate to the date of the first publication.*

Cross-interrogatories.

18. Whenever a party may desire to be present at the examination of a witness called against him, he shall give notice to the adverse party by filing a notice with his cross-interrogatories, whereupon, it shall be the duty of the register to prescribe the notice which he shall receive, of the time and place of the execution of the commission.

* This rule was abolished by the supreme court, January Term, 1845.

Re-examination of witnesses when party has not filed cross interrogatories.

19. It shall be lawful for a party against whom a witness has been called, to re-examine the same witness, provided he has not filed cross-interrogatories—and the examination of such witness, if made under this rule and be so expressed, shall operate as a cross-examination of the said witness—and both parties shall have the liberty of being present at such examination, but it shall be the duty of the party wishing to examine such witness, to give notice at the time of filing his interrogatories, that he is desirous of being present, and the register shall furnish the notice that shall be given to the adverse party, of the time, place and person, before whom the commission shall be executed.

Duty of register to order re-examination on discovery of new facts.

20. Where a party who has filed cross-interrogatories, afterwards learns, that the witness has a knowledge of facts which he did not know at the time of filing his cross-interrogatories, it shall be the duty of the register, on affidavit made setting forth these facts, to order a re-examination as in the preceding rules.

Depositions.

21. Depositions shall be sealed up with the commission, by the commissioner, with the title of the case indorsed on the envelope, and the package shall be directed to the register at the proper place: publication of the testimony must be passed by the court or before the register, or it may be done by consent of parties in writing entered of record: after publication passed, no testimony shall be taken, except by consent or by special application to the chancellor, and allowance by him.

Bill of interpleader. Testimony.

22. The complainants to a bill of interpleader intending to take testimony, must give notice to the parties required to interplead, and if the defendants, or either of them, desire to take testimony, they must give notice to the complainants.

Testimony de bene esse; when and how taken.

23. Testimony, de bene esse, may be taken before answer filed, when the proof of a material fact depends upon the testimony of a single witness—where the witness is over sixty years of age, or where the witness is so infirm that the party fears that injury will result from delay, owing to such infirmity, or where the witness is about to remove permanently from the state. The application for a commission shall be made to the chancellor in court, or register, according to the manner heretofore provided. In other cases of emergency, which shall be exhibited in the application, the register may issue a commission for the examination of such witness at any time; and after the examination of a witness de bene esse, the party calling him shall not be required to make further examination, but may use the testimony so taken—the opposite party shall have the right to examine such witness.

How to proceed when infant defendant resides out of district.

24. If an infant defendant reside out of the chancery district, the court of chancery may issue a commission to cause a guardian to be assigned, and to have his answer taken; and in case no application is made to the court for the appointment of a guardian by the infant, parent, guardian or

person, in whose control the infant is shown to be at the first term after service, it shall be lawful for the chancellor to cause some competent person to be appointed—provided, that no decree shall be rendered at the term at which such appointment shall have been made, and that another guardian may be appointed at or before the second term, upon application to the chancellor, and on a proper showing. Where an infant defandant is a non-resident, the court shall have power to appoint a suitable person, residing in this state, guardian ad litem, after proof of the infancy of the defendant, his or her non-residence, and that publication has been duly made.

Or is a non-resident.

25. In mortgage suits, it shall be sufficient to bring in subsequent incumbrances to state that they claim some interest in the subject of the bill, and to pray for a subpœna to them: and the court shall have power to decree a sale and direct the proceeds to be brought into court without adjusting the priorities between such parties; unless there be some equity shown which makes it necessary—and any person, whether a party to the suit or otherwise, shall have the liberty to present his claim by petition to the court for the proceeds of the sale before distribution.

In mortgage suits incumbrances, &c.

26. If it shall be discovered that there are subsequent incumbrances, or parties in interest, not made parties to the cause, at any time before confirmation of the sale, in any mortgage suit, the complainant or purchaser shall have liberty to bring them before the court at that stage of the proceedings, and if they make no opposition by answer, their interest may be foreclosed, without a re-sale of the property.

Rights of subsequent incumbrancers.

27. An injunction to stay proceedings at law, either before or after judgment, shall in no case issue, until bond and security have been given in such sum, and with such condition as the chancellor or judge may direct; on awarding an injunction for any other purpose, it shall be in the discretion of the chancellor or judge to require security.

Injunctions; when issued.

28. If the complainant shall not, before the second term after filing his bill, have taken measures to bring in the defendant, his bill shall be dismissed.

Dismissal of bill for complainant's neglect.

29. Where a defendant resides out of the state, on the application of his solicitor, the register shall issue a commission directed to one or more persons, to take and certify his answer—the affidavit to the answer shall be attached thereto, sworn to and subscribed by the defendant, before such commissioners, or one of them, and so certified by him or them. Where an affidavit to the bill or petition of a party residing out of the state is necessary, it may be taken and certified in like manner. The answer of a foreign corporation, taken according to law, may be certified by commissioners appointed in like manner.

Answers of non-resident defendants and foreign corporations.

30. All demurrers shall state the matters of objection to the bill. If a demurrer be overruled, the defendant shall forthwith put in a full and sufficient answer.

Demurrers.

31. A defendant may at any time move to dismiss a bill

Bill dismissed or injunction dissolved for want of equity.

or dissolve an injunction for want of equity. When exceptions to an answer for insufficiency have been filed and disallowed, the injunction shall thereby be dissolved without motion or further argument.

Costs; by whom paid.

32. The unsuccessful party in a demurrer to a bill, exceptions to an answer, motion to dismiss a bill, or to dissolve an injunction, shall pay the costs thereof, unless the court shall otherwise order.

Proceedings where complainant or defendant fail to appear

33. When a cause is called for hearing, if the complainant does not appear, it shall be dismissed; if he appear, and the defendant does not, it shall be heard, and a decree rendered according to the claim and proof. Either party, on timely application, may set aside his default, on such terms as the court shall impose.

Complainant's counsel to furnish brief.

34. At the hearing of every cause, the complainant's counsel shall furnish to the court, a brief, containing a succinct statement of the material facts stated in the bill, answer, exhibits, and testimony, the points raised and the authorities on which he intends to rely; if he fail to furnish such brief, he shall not be heard in argument.

Bill of review

35. A final decree shall be called in question, before the court rendering it, by bill of review; and shall never be impeached by original bill, unless on the ground of fraud.

Suit at law and bill in chancery for same claim or demand.

36. Where a suit at law, and a bill in chancery are instituted for the same claim, the defendant, on suggestion, supported by affidavit, may move the court to inspect the records, and if it appear that the two suits are for one and the same cause of action, it shall be ordered that the plaintiff elect in which he will proceed, and that he dismiss the other.

Sessions of register; where held.

37. The sessions of the register as master in chancery, shall be held at his office, unless, by consent of parties, he appoint a different place.

Exceptions to testimony.

38. Exceptions to testimony admitted by the register, must be taken before him, and certified in his report; if not so taken the exception is waived.

Sales.

39. The register shall conduct all sales, made under decree, and the court shall fix his compensation therefor.

Order against non-resident defendants, when made, published, &c

*40. Where a bill charges that a defendant thereto resides out of the state, if the complainant, or other credible person, make affidavit in writing before the register or a justice of the peace, that such defendant is, as he believes, a non-resident, stating the place where such defendant resides, and that he is of the age of twenty-one years, or, if the defendant's residence is not known to the person making affidavit, state therein that the same is unknown: or, if the bill sets forth the facts required to be stated in said affidavit, and is sworn to, it shall be the duty of the register to make an order against such non-resident defendant, requiring him, her, or them, to answer or demur to said bill within such

Duties of register respecting such orders.

* All the rules from 40 to 51, except rule 50, were adopted by supreme court at the June Term, 1842.

time as he may prescribe therein, not less than sixty nor more than ninety days from the making thereof. Orders of publication as to non-resident defendants, made by the court during its sitting, shall, as to the time required to answer, be governed by this rule. The register shall have all orders of publication against non-resident defendants, whether made by the chancellor or himself, published, with as little delay as may be, in such newspaper as may be designated in the order, once a week for four consecutive weeks; a copy of which order he shall post up, at the door of the court house of the county where the court sits, and send by mail another copy thereof to the defendant, where his residence is shown by the bill or affidavit as aforesaid, which copies shall be posted up, and sent by the mail, within forty days from the making of said order.

Non-resident infants; how made parties

41. Infants residing beyond the limits of this state, may be made parties defendants, by publication, according to the foregoing rule; but a copy of the order of publication, instead of being sent to the infant, shall be sent to the person designated in the fourth rule, for the regulation of chancery practice, adopted at January term, 1841, in the order therein mentioned. On the expiration of the time required to answer in the order of publication, the register in vacation, or chancellor in term time, may appoint a guardian ad litem, for the infant defendant. A guardian ad litem shall not be required to answer in less than thirty days after his appointment, except in the case provided for in the rule next following. If a guardian ad litem fail to answer the bill, for more than thirty days after his appointment, the register shall file a formal answer in the name of said guardian, denying all the allegations of the bill. No one shall be appointed a guardian ad litem, unless he previously consent thereto in waiting.

Chancellor or register may appoint guardian ad litem, if he consent in writing, &c.

Infant defendant of fourteen years, failing to name guardian ad litem, register or chancellor may appoint such, to be superseded if infant appear, &c.

42. If an infant defendant of fourteen years of age, is served with subpœna to answer, and fails to name a guardian ad litem, within thirty days thereafter, the register in vacation, or chancellor in term time, shall appoint such guardian, who may be superseded by the infant appearing, either before the register in vacation or chancellor in term time, and making choice of another, or having such choice certified by a justice of the peace, to the court or register, and on the guardian ad litem, if necessary, forthwith putting in an answer for the infant.

Commissions to take testimony when issued, &c.

43. Commissions to take testimony shall be issued by the register, directed to one or more persons to execute, and shall be issued at any time after ten days' service of the interrogatories in chief, on the adverse party or his solicitor, who shall file cross-interrogatories within the ten days. The party filing the interrogatories in chief, if cross-interrogatories be filed, may file rebutting interrogatories thereto, at any time before the issuance of the commission. The original interrogatories, as well as those in chief, cross and rebut-

ting, (if any,) or copies shall accompany the commission, which commission shall contain the usual authority to the commissioner or commissioners, and be executed in the usual manner of taking depositions or interrogatories, without enjoining secrecy on the part of the commissioner or witness or requiring a private examination. Objection may be made to the rebutting interrogatories, after the publication of the testimony; or to the cross-interrogatories, if it appear that there was no opportunity of making it before the commission issued.

Testimony; how impeached.

44. The testimony of witnesses may be impeached by deposition taken according to the foregoing rule, without filing articles of impeachment.

In supplemental bills, and bills of revivor not necessary to recite any of original.

45. In filing supplemental bills and bills of revivor, it shall not be necessary to recite therein any part of the original bill, or any other subsequent part of the proceedings; but in supplemental bills, it shall be sufficient to refer to the original and state the new matter; and in bills of revivor, the cause requiring a revivor with the appropriate prayer and conclusion.

Subpœnas on supplemental bills and bills of revivor.

46. Subpœnas on supplemental bills and bills of revivor, shall be returnable to a day certain, not less than thirty days from the time of their issuance, and, on their being executed thirty days, the register in vacation, or chancellor in term time, may, if a supplemental bill be not answered, order the same to be taken pro confesso, subject to be set aside on filing a sufficient answer; or, if a bill of revivor, order the suit to stand revived: provided, no subpœna to answer a supplemental bill, or to revive, shall be returnable to a day beyond the first day of the next term: and provided further, that if thirty days do not intervene between the filing of the bill and the next term, the subpœna shall issue returnable to that term, and if executed five days before its commencement, the order pro confesso, or to revive, shall be then made; unless good cause shall be shown to the contrary.

Orders of publication on supplemental bills and bills of revivor.

47. Orders of publication against non-resident defendants, may be made on supplemental bills and bills of revivor, as directed in the foregoing rule number two, and rule twenty-one, adopted at January term, 1841, and after the expiration of the time required to answer or show cause, the supplemental bill may be taken pro confesso, or the suit revived as to such non-resident defendant.

Not necessary to deliver copy of supplemental bill or bill of revivor to defendant.

48. It shall not be necessary to deliver a copy of a supplemental bill or bill of revivor, to a defendant, on serving him with subpœna to answer the same.*

If feme sole marry pending suit, husband how made party to.

49. When a feme sole defendant marries pending a suit, upon a suggestion in writing setting forth that fact, her husband may be made a party by service of subpœna and copy of the bill, to be issued by the register in vacation, or, in term time, by the chancellor on motion.

* Abolished January term, 1845.

50. Whenever a plaintiff or defendant in a cause in chancery is dissatisfied with the decree therein rendered, such person may sue out a writ of error in the name of himself and his co-plaintiff, returnable to the supreme court; and the plaintiff in error may sever in the assignment of errors, or any one or more of them may assign errors, and the cause proceed to judgment without the necessity of a summons and severance, as to the plaintiffs who do not join in the assignment; and the plaintiffs, who have not caused the writ of error to be sued out, or in any manner aided in the prosecution of the cause in the supreme court, shall not be taxed with the costs here accruing.* Complainant or defendant may take writ of error to supreme court.

51. The rules of the English court of chrncery, not inconsistent with the statutes of this state, and the rules and decisions of this court, so far as consistent with the institutions of this country, are hereby adopted as rules of practice in courts of chancery in this siate. Rules of English chancery court.

IN THE SUPREME COURT.

JANUARY TERM, 1845.

Amendment to the rules for the regulation of the Practice in Chancery, adopted the 31*st January*, 1845.

1. The twenty-first rule for the regulation of the practice in chancery, adopted by this Court at its term holden in January, 1841: and the ninth rule of the additional rules, for the regulation of the practice in chancery, adopted by this Court, at its term holden in June, 1842, are hereby abolished.

2. Orders of publication against non-resident defendants may be made on supplemental bills, and bills of revivor, as directed in rule number two, of the additional rules for the regulation of the practice in chancery, adopted at June term, 1843; and after the expiration of the time required to answer or show cause, the supplemental bill may be taken pro confesso, or the suit revived as to such non-resident defendant.

* Adopted January term, 1841.

INDEX.

ABANDONMENT.

By husband or wife for three years, cause of divorce, 1961

ABATEMENT, PLEAS IN.

See "Pleadings."

Not allowed for want of form, 2402

Attachments abated, if issued without bond or oath 2561

Attachments before justices not abated for want of form on appeal, 2849

To be sworn to unless proved by record, 2238

ABATEMENT OF SUITS.

See "Indictments."

On abatement by defendant's death, plaintiff pays costs, 2389

Death of a representative does not abate action as to others, 1927

Death of either party abates suit before justice, unless revived by notice, &c. 2817

Personal actions, except for injury to person, &c. survive, 2157

Real actions, and actions for trespass to land survive to heir or administrator, 2158

Marriage of a female party does not abate a suit, 2150

Actions not abated by death of party, but revived in eighteen months, 2146

Death of nominal plaintiff does not abate suit. 2147

ABORTION.

Causing by drugs, &c. how punished, 3230

ABSCONDING FELONS.

Governor to offer reward for, 3823

ABSCONDING.

Cause of attachment, 2504

ABSENCE.

See "Vacation of Office."

ACCESSORIES.

Before the fact, indicted as principals, 3526

After the fact, who punished as, tried though principal escape, 3227–8–9

ACCEPTANCE.

See "Bills of Exchange," &c.

ACKNOWLEDGMENT AND PROBATE OF CONVEYANCES, &C. FOR RECORD.

See "Conveyances."

Who may take, how taken in other states and countries, 1276–7

Of powers of attorney to make conveyances, 1278

Form of acknowledgment, 1279

Form of Probate, 1280

Record of conveyance upon makes deed evidence without proof of execution, or certified copy evidence, 1275

Record on dispenses with witness to deed, 1267

Required to conveyances of certain property by married women, 1282

Record without probate or acknowledgment is notice, 1274

Probate or acknowledgment of certain conveyances by married women, 1282

Probate of conveyance for record attested by two witnesses, 1281

Personating another to acknowledge deed, how punished, 3155

ACKNOWLEDGMENT OF COMMERCIAL INSTRUMENTS.

Notaries public take, 857

ACCOUNTS.

See "Claims," "Chancery," "Partners."

Open, barred by limitation of three years, 2480

Between merchant and merchant not within statute of limitation, 2488

ACCUSED.

Privileges of on "criminal prosecutions," see Con. Ala. Art. 1, Sec. 10, page 30.

ACTIONS, CIVIL, AT COMMON LAW.

See "Parties;" how commenced, see "Summons" and "Complaints;" real, see "Real Actions," "Pleadings," "Bail," "Detinue," "Slander," "Evidence," "Bills of Exceptions," "Appeals from Justices and Certiorari," "Appeals in Civil Cases," "Justices, proceedings before."

ACTIONS AT LAW, TRIAL OF, AND THE INCIDENTS.

Cause tried at first term, if summons executed twenty days, 2257

Time allowed for filing pleas, 2258–9

If term only one week, pleas filed in two days, 2260

Cases set for certain days, and witnesses summoned, &c. 2261

Each party may challenge four jurors without cause, 2262

Jurors empanelled, summoned and sworn as in state cases, 2262

Struck jury in certain cases, 2262

Only two counsel to argue on a side, 2265

Non-suits taken before jury retires, and two equal to verdict, 2266

Only two new trials granted to either party, 2267

If pleadings lost, copy to be filed, 2268

Jury take out written evidence with them, 2269

Actions consolidated which might have been joined, 2270
Jurors inhabitants of city or county, not incompetent for interest, 2272
Suits may be dismissed in vacation on notice, 2271
Notice to attorney notice to client, 2273
Court to state the evidence and charge the jury, 2274
Interpreters engaged and sworn if necessary. 2275
Instituting in another name, fine for, 3291-2

ACTS OF ASSEMBLY.

See "Laws and Journals."
Public acts repealed by, and private, &c. continued in force by Code, 10-11
Agents appointed to distribute, 99

ADDITIONAL BONDS.

See "Bonds," "Executors and Administrators."

ADJUTANT GENERAL.

Repor's condition of public arms to Governor, 555

ADMINISTRATION, GRANT OF LETTERS OF.

See "Executors and Administrators."

ADMINISTRATORS.

See "Executors and Administrators."

ADMIRALTY, PROCEEDINGS AGAINST BOATS, &C. IN.

Lien on all boats for materials, labor and supplies, 2692
Complaint sworn to and filed in circuit court, 2693
Writ of seizure issues, boat released on bond, 2694-5
Writ not to issue for less than fifty dollars, creditors may unite, 2696
All claims consolidated, judgment at first term, when, 2697-8
If bond made, obligors are stipulators and parties, 2699
If either plaintiff cast, cost taxed against him, 2700
Publication made if no bond is given, 2701
If no bond given, court may order sale before judgment, 2702
Sale made when boat seized sixty days before court, 2703
Expenses of custody of boat paid to sheriff, 2704
All obligations releasing boat are stipulations, 2705
Lien lost if not asserted in thirty days, 2706
Proceedings as in United States admiralty courts, but issues tried by jury, 2707
Abuse of admiralty writs subjects to damages, 2708

ADOPTION OF CHILDREN.

See "Legitimation," &c.

ADULTERATING.

Sugar, fine and imprisonment for, 3267

ADULTERY.

Cause of divorce "a vinculo," (see "Divorce,") 1961
Divorce for, bars wife of dower, 1974
Living in, or fornication, first, second, and third conviction of, how punished, 3231

ADVANCEMENTS BY PARENT TO CHILDREN.

See "Descents and Distributions."
Deducted from portion of the child on distribution, 1582
If greater than his portion, child takes nothing, 1583
Considered a part of the estate in which it was made, 1584
Defined, value of, how ascertained, 1585-6-7

AFFIRMATION.

Witnesses may testify upon, 2301

AFFRAYS.

Sheriff's duty to suppress, his power, 3336

AGENTS.

Of foreign corporations, see "Banks and Banking," "Taxation of Corporations,"
To distribute acts, &c. see "Acts of Assembly."
Embezzlement by, see "Embezzlement."
Of foreign banks to use only gold and silver, fined for using other funds, and notes discounted void, 939-40-41

AGREEMENTS.

Certain, not in writing, void, see "Frauds and Perjuries."

ALABAMA.

State of, its boundary, see "Boundary."
Act of admission into the Union, page 25.

ALIAS WRIT OR SUMMONS.

See "Summons."

ALIENS.

Prisoner not entitled to claim jury of, 3589
See "Descents, &c." "Wills."

ALTERATION.

See "Marks and Brands," "Forgery."

ALLOWANCES.

See "Divorce and Alimony."
See "Fees of officers."

ALIMONY.

See "Divorce and Alimony."

ALLOTMENT.

See "Dower," "Partition."

ALTERNATION OF JUDGES.

Circuit judges required to alternate, 630

AMENDMENTS.

Of indictments, 3538-9
Of proceedings in chancery. See "Chancery."

AMENDMENTS OF PROCEEDINGS AND JUDGMENTS AT LAW.

Allowed in three years if enough of record to amend by, 2401
Pleadings not quashed, &c., for want of form, 2402
Of form permitted and parties added or struck out any time before final trial, 2403
Mistakes of names, dates, &c., cured after judgment, if correctly stated in any part of proceedings, 2404
Judgment not set aside except on objection made in the court below, if a cause of action is stated, 2405

AMENDMENTS TO THE CONSTITUTION.

How proposed and ratified, 351
Votes on, how counted—statement of votes, 352

Estimate of result, by whom made; how returned, 353–4

ANIMALS, AT LARGE.

See "Stallions," "Estrays."

ANSWERS IN CHANCERY.

See Chancery.

APPEALS IN CIVIL CASES.

Appeals allowed to Supreme Court as a matter of right on all final judgments, 3016
Appeals by the State supersede judgment without bond, 3017
Adverse party to have notice by citation, 3018
Appeal does not supersede the judgment without bond, 3019
Chancellor (or register in vacation) to direct the amount of bond when decree is not for payment of money, 3020
Clerk, Register, Judge of Probate liable for taking insufficient bond, 3021
Transcript of record, &c. delivered appellant, 3022
Bond on appeal of claimant, double the judgment, or assessment of value, 3023
Ten per cent. damages on affirmance of such cases, 3024
Bond for hire to be given by party appealing from judgment recovering slaves, 3025
Motion for execution for the hire on affirmance, 3026
Ten per cent. damages on affirmance of judgment of recovery of personal property, 3027
Clerk liable for damages for furnishing incomplete transcript, 3028
Appellee to have certificate of appeal, 3029
Transcript to be filed by third day of the term, 3030
Judgment affirmed on certificate, if the record be not filed, 3031
On affirmance of money judgment, ten per cent. damages, 3032–3
Judgment on decree may be reversed and rendered or remanded, 3034
Supreme Court directs notice of appeal to appellee who is a non-resident, by publication, 3035
Confession of judgment releases errors, 3036
Causes reversed for clerical errors at cost of appellant, 3037
Cause revived as to representatives on death of either party, 3038
On death of either party after judgment appeal by or against the representative, 3039
Appeals to be taken in two years except those on judgments now rendered, 3040
When appeal bond is not given, security for cost required, 3041

APPEALS AND WRITS OF ERROR IN CRIMINAL CASES.

Any legal question may be reversed by prisoner; how, 3649–50
Clerk to make out and transmit transcript to Supreme Court, 3651
Judgment in misdemeanor how rendered when point reserved, 3652
Defendant bailed and not appearing, writ of arrest issues, 3653
Proceedings on arrest and subsequent prosecution, 3654–5
In felony, judgment rendered but execution suspended, 3656
Supreme Court, or a judge of may award writ of error, 3657
If awarded in vacation entry to be made, duty of clerk, 3658–9
Defendant retained in custody—in misdemeanors bailed, 3660–1
Writ of arrest on failure to appear; no assignment of errors, 3662–3
Sentence passed if judgment affirmed, 3664
Order, when judgment reversed, 3665
If day of execution passed, another day fixed, 3666

APPEALS FROM COURTS OF PROBATE.

In what cases and to what courts—from Circuit to Supreme Court on contest of will, 1888–9
Bills of exceptions taken; copied into record and appeal tried on it, 1890–1
Supreme Court renders judgment if all evidence set out, 1892
Transcript on contest of will; from Circuit to Supreme Court; when, 1893–4
Bond and security on appeal from order of removal, 1895
Execution on the bond for costs on affirmance; also a security to the estate, 1896–7
Security for costs required on all appeals, 1898
Costs of appeal may be allowed against the estate, 1899

APPEALS FROM JUSTICES AND CERTIORARI.

Tried at first term without regard to defects in summons, &c. 2368
If sum less than twenty dollars, tried by court, 2369
Damages if taken for delay, 2370
Costs in appeal cases apportioned at discretion of judge, 2371
On affirmance, judgment against sureties, 2372
Not dismissed for defects in bond, &c., 2373
Not tried at first term without five days' notice, 2374
Not allowed after five days; bond required, 2811

APPORTIONMENT.

See Con. Ala., 33,—Am. Con., 49.
Of representatives and senators in the general assembly, 26–7
Of representatives in congress, 31
Of hands on roads. See "roads."

APPOINTMENT.

Of trustees. See "Trustees," see "conveyances."
Power of appointment among several, how exercised, 1334
In default of, fund divided, 1335
Consent of another when required, to be written, 1336
Grand children take under as children, 1337

APPRAISEMENT.
See "Executors and Administrators," "Estrays" "Salvage," "Estates of deceased persons."
APPRENTICES AND APPRENTICESHIP.
See "Poor."
Court of Probate has jurisdiction of, 670
APPROVAL OF BONDS.
See "Bonds, official."
ARBITRATION AND ARBITRATORS.
Order for reference of case, to be entered on motion of parties, 2709
Award made when no suit pending, entered as judgment, 2710
Reference to be in writing and signed; award in writing, 2711–12
Majority act, and fill vacancy, 2713
Award has force of judgment, and returned to clerk, 2714
Performance enforced by attachment, 2715
Arbitrators sworn; they summon witnesses, &c., 2716–17
Parties competent witnesses before; subpœnas, how served, 2718–19
Defaulting witness fined; award final, 2720–1
Arbitration at common law as heretofore, 2722
Pay of arbitrators, witnesses and officer, 2723
Fees of witnesses paid in advance, 2724
ARMY AND NAVY OF U. STATES.
Service in, disqualifies elector, 171
ARMS.
See "Concealed Weapons."
Citizens, constitutional right to bear, page 31
Slaves not to carry unless licensed by justice, 1012–13
ARMS, PUBLIC.
Quartermaster General has custody of and provides volunteers, 550–1
Distributed by Governor, in case of necessity, 552
Brigade Quartermaster reports to Quartermaster General, 553
Quartermaster General to Adjutant, and he to Governor, 554–5
ARRAIGNMENT AND PRELIMINARY PROCEEDINGS IN CRIMINAL CASES.
See "Trial."
ARRESTS.
Unreasonable forbid. See Con. Ala., page 30.
Arrest in criminal cases, and writs of arrest after indictment.
See "Criminal Prosecutions, commencement of."
See "Bail."
Privileges of electors from.
See "Electors and Elections."
By whom made. All to aid officers if required, 3418–19
Who officers within the meaning of this article, 3420
When made under warrant for indictable offences, 3421
By private persons for felony, when made, 3422
Officer acting under warrant to produce it, 3423
May, under warrant, break door or window, 3424
When to arrest without warrant, 3425
In such cases may break door or window, 3426
May arrest at any time on reasonable suspicion of felony, 3427
Duty of officer arresting without warrant, 3428
Magistrate may order arrest when he sees offence committed, 3429
When made by private persons. Duty on making 3430–1
When lawful for private person to break door, &c., 3432
Private person's duty on making arrest, 3433
Pursuit on escape on rescue, 3434
Doors, &c., may be broken to recaptnre, 3435
Writs of arrest.
See "Bail."
Writ of arrest on indictment presented for felony, 3543
When indictment is for misdemeanor, 3544
By whom executed. Bail if misdemeanor, 3545
Copy of writ delivered jailor on commitment, 3550
Writs of; how returned, 3552
Penatly for failure to execute. Any number may issue. 3558–9
ARSON
In the first degree defined, dwelling house defined, 3185–6–7
In the second and third degree defined, 3188–9–90–1–2
Different degrees of, how punished, 3193
By slave, capitally punished, 3313
ASSAULTS AND BATTERY.
Action for, barred by limitation of one year, 2481
By slave on white man to rob, maim, &c., 3311
By slave with intent to kill white man, 3312
Assault with intent to rob, maim murder or ravish, 3106
With cowhide, &c., having a weapon to intimidate, 3107
On slaves, without cause, a misdemeanor, 3300
ASSEMBLY.
See "General Assembly," "Unlawful Assembly."
ASSESSMENT OF TAXES.
See "Tax Assessor."
ASSIGNMENT.
See "Bills of Exchange, &c."
Of dower.
See "Dower."
Of contracts.
See "Bills of Exchange and Promissory Notes, &c."
ASSIGNMENTS, (GENERAL)
Enure to equal benefit of all the creditors 1556

Partner in limited partnership not to make, 1513
No proof of assignment of notes, &c., required, unless it be denied by sworn plea, 2280
Assignor not competent for assignee; exceptions, 2290
ATTACHMENTS AT LAW—ISSUE OF ORIGINAL ATTACHMENTS.
May issue to collect any debt or damages, 2503
Causes of attachment, 2504
By whom issued. Affidavit of debt and ground of, 2505–6
Bond also required with security, 2507
Affidavit of facts showing damages also required, 2508
On attachment by one non-resident against another, 2509
Advertisement of attachment against non-resident, 2510
State Bank attaches without bond. Corporation may attach, 2511–12
Against foreign corporations. 2513
Form of; no objection for want of form, 2514
Bond and affidavit returned to court, 2515
In what manner and on what property levied.
May be levied on any property and choses in action by garnishment, 2516
Garnishee cited to appear and answer on oath, 2517
Levied on joint or separate estate of partners, 2518
Executors and administrators garnisheed or sued by attachment, 2519
Garnisheed for amounts due legatees, distributees, &c., 2520
Money in hands of officer or attorney attached, 2521
Judgments against executors, &c., suspended eighteen months, 2522
Money in trustee's hands attached, 2523
Debts in suit attached. 2524
Executed wherever property is found, 2525
Branch writs to other counties when necessary, 2526
Lien created by levy of, or service of garnishment, 2527
Property, if perishable, sold by order of court, 2528
Sale made before court in case of necessity, 2529
Amount so received recovered on motion if plaintiff fail, 2530
Slaves levied on not imprisoned unless required, 2531
Indemnifying bond required in case of doubt, 2532
Attachments for rent.
Landlord has lien on crop, and attaches if removed, 2533
Bond and affidavit required before issue of, 2534
Levied on crop in hands of purchaser with notice, 2535
Replevy of property levied on.
Property replevied on giving bond, 2536
Claim and trial of right of property as in other cases, 2537
On forfeiture of such bonds execution issues, 2538
If property destroyed without fault, value received in discharge, 2539
Proceedings against garnishees.
Garnishee to answer in three first days of term, and may be examined orally, 2540
Judgment for amount admitted, execution stayed till due, 2541
Property in possession of garnishee condemned, 2542
Execution on refusal to deliver it, 2543
On loss or destruction value received in discharge, 2544
Conditional judgment on failure to answer, &c., 2545
Collateral issues in proceedings against garnishees.
Plaintiff may contest the truth of answer on oath, 2546
Defendant may contest garnishee's answer; how, 2547
If answer not sustained judgment against garnishee, 2548
On claim of another being suggested claimant made a party, 2549
Proceedings to try the claim; if contestant a non-resident, 2550–1
On "not found" returned as to contestant, judgment for plaintiff, 2552
Jurisdiction not changed by these issues, 2553
Bills of exception in such cases; costs, 2554
Appeals allowed either party, 2555
Garnishee recovers costs on his discharge, 2556
On death of garnishee administrator made a party, 2557
Judgment suspended till such issues determined, 2558
Condemned property restored if plaintiff fail, 2559
Alias attachments and new garnishments if property insufficient, 2560
Attachments issued without bond abated, 2561
Amendments of bonds, affidavits, &c., permitted at any time, 2562
Judgment for garnishee bars defendant's claim, but he may appeal, 2563
Cause of issue not issuable, but action for issuing, 2564
Vindictive damages for malicious attachments, 2565
Ancillary attachments.
Issued by clerks in suits already commenced, 2566
Judicial attachments.
Proceeds as original attachment, 2567
See "Chancery."
Issue on affidavit that defendant evades process, 2568
Judgment against other defendant; satisfaction of abates, 2569
May issue to compel delivery of property on verdict in detinue, 2197

Pleadings in attachment.
Complaint to be filed in three days, not tried till second term, 2570
Complaint not filed till debt due, 2571
Trial when defendant appears; judgment in default of, 2572
Execution for the balance not made out of attached property, &c., 2573

Attachment of Steamboats.
Lien for damages by collision and attachment to enforce, 2574
Affidavit and bond filed before issue of, 2575
Issued as in other cases; boat seized to satisfy judgment, 2576–7
Replevied by bond to satisfy judgment, 2578
Or by bond to pay value of the boat, &c. 2579
Payment of appraised value discharges the bond, 2580
Judgment on affidavit if no replevy; if replevied, obliges defendants, 2581
Defendant to show due diligence on proof of collision, 2582
Boat sold, if not replevied in sixty days, 2583
Proceeds of sale divided among attaching plaintiffs, 2584
Bond filed with clerk, &c., 2585
Other remedies may be pursued, 2586

Attachments before Justices.
For fifty dollars, or less, issued only by and returnable to justices, 2838
Provisions as to other attachments applicable to, 2839
Form of the attachment, 2840
Notice of levy on land to be given and order of sale obtained, &c., 2841
Debts in suit and money in officers' hands not levied on, 2842
Perishable property sold by order of justice, &c., 2843
Garnishee's answer in writing, and is evidence on appeal, 2844
Execution on replevy bond, if property not delivered, 2845
Contents of answers and collateral issues tried without jury, 2846
Execution for balance if levy not sufficient, 2847
Appeals allowed on contested answers, &c., 2848
Not quashed for want of form in bond or affidavit on appeal, and no objections allowed, not taken below, 2849

Attachments in Chancery. (*Equitable Attachments.*)
See "Chancery."

ATTORNEY GENERAL.
Election by General Assembly—term of office four years, 18
Is solicitor of circuit of seat of government, 721
Gives bond before entering on office, 71
Keeps office at seat of government, 72
Is the law officer of the State, and gives advice, &c. 72
Salary is 425 dollars, 73
Duties of in relation to "School Fund." See that title.

ATTORNEYS AND SOLICITORS.
Who admitted to practice as; only in courts specified in license, 729-30
Who to be licensed; application for; proof of age, &c., on, 731-2
Character of examination as to qualifications, 733
Order of admission, if found qualified, 734
Oath of attorney; penalty for not taking, 735-6
Suitors may conduct their own causes, 737
Duties and obligations of attorneys, 738
Certain judges and officers disqualified, 739-40-1
Clerks and registers not to practice in their courts; penalty, 742
Clients bound by written agreements of, 743
Party relieved on appearance of without retainer, 744
Penalty for so appearing; proof of retainer, how made, 745-6
When struck from the rolls, and for what causes, 747-8
Proceedings against, by whom commenced; charge sworn to, 749-50
Notice to answer; trial on default; plea or demurrer, 752-3-4-5
May require trial by jury, 756
May appeal to Supreme Court; proceedings, in whose name, 757-8
Testimony, how taken; costs; abatement on death of party, 759-60
Attorney of other States allowed to practice, 762
One fee taxed for, against losing party in each case, 3048
Money in the hands of may be attached, 2523
Only two allowed to speak on a side, 2265
Written notice to, is notice to client, 2273

ATTORNEY, POWER OF.
See "Powers." "Conveyances."

ATTORNMENT.
Dispensed with, but payment by tenant valid till notice, 1298

AUCTION AND AUCTIONEERS.
Taxes on sales at; on licenses of, 391-7
Memorandum of sale of real estate by, takes case out of Statute of Frauds, 1552

AUDITING ACCOUNTS.
See "Comptroller;" "Court of County Commissioners."

AUTHORITY.
When joint in officers, exercised by majority, 3

AUTHENTICATIONS OF RECORDS, AND JUDICIAL PROCEEDINGS.
Acts of Congress prescribing mode of, p. 50.

AWARDS.
See "Arbitration."

BAIL IN CIVIL CASES.
See "Habeas Corpus."
When required; oath and security for costs, 2175
In "qui tam," or damage suits, when required, 2176
How required if suit is pending; all bail special bail, 2177-8

Condition of the bail bond, payable to plaintiff, 2179–80
Liability of sheriff for insufficient bail, notice to him, 2181
Defendant discharged on affidavit and schedule of property, 2182
Notice to plaintiff, who may contest, 2183
Defendant imprisoned if verdict against him, 2184
Otherwise discharged, appeals by either party, 2185
Property in schedule vests in sheriff for use of plaintiff, 2186
Divided among arresting plaintiffs, 2187
Bail may surrender the principal debtor, 2188
Notice of confinement in penitentiary discharges bail, 2189
Liability of bail if ca. sa. returned "not found," 2190
On surrender of principal bail pays costs, 2191

BAIL IN CRIMINAL CASES.

See "Criminal Prosecutions," "Habeas Corpus," "Forfeitures of Bail."
Slaves bailable before conviction, 3332
Excessive bail not to be required, Con. Ala., page 30.
Provisions as to bail of slaves, 3333–4
Appeal from justice to judge of probate, 3335
Admission to bail, what, how done, 3667–8
Capital cases not bailable; before conviction bailable in other cases, 3669–70
When allowed as matter of course in capital cases, 3671–2
If bail refused, application to Supreme Court, 3673
On order of bail, amount of bond directed, &c., 3674–5
Form of bail bond, form of entry in open court, 3676–7
Legal effect of undertaking of bail, 3678–9
Lunatics, married women, infants, &c. need not sign, &c., 3680
Qualifications required of bail, 3681
Bail sworn if sufficiency doubtful, 3682
Bail not discharged for want of qualification, infancy, &c., 3683
Recognizances and bail bonds already taken valid and binding, 3684
Bail may surrender defendant at any time, 3685
How to arrest defendant in order to surrender, 3686
Surrender, how and to whom made; new bail, when required, 3687–8
Undertakings of bail, how, to whom, and when returned, 3689

BAIL, FORFEITURES OF UNDERTAKINGS OF.

Forfeitures of bail not absolute (without appearance) at first term, 3690
Conditional judgment entered on forfeiture, notice to bail, 3691–2
Notice executed by sheriff, and returned as other process, 3693
Other notices issue if not served; excuse for cause, 3694–5
No costs when set aside; in what cases two notices equal to service, 3696–7
Excuses to be heard at any time during the term, 3698

BAKERS.

To make initials of name on bread, 1116
Penalty for failure, penalty for using other name, 1117

BALLOT.

In elections by the people voting to be by ballot, defined, 206–7
Fraudulent charge of, penalty for, 361
Penalty for meddling with after commencement of election, 362

BAGATELLE.

Tax on license of table, 397

BANKS AND BANKING PRIVILEGES.

See "Corporations," "Change Bills," "Free Banking Associations," "Bills of Exchange and Promissory Notes."
Constitutional provisions respecting, page 44
Acts relating to state bank and branches still in force, 10
Acts relating to Planters' and Merchants' Bank still in force, 10
On failure to pay their notes, judgment on motion, 937
Governor to require solicitor to proceed for forfeiture also, 938
Agents of foreign banks to use gold and silver only, 939
Notes and bills discounted by them with other funds void, and agent fined and imprisoned, 940–1
Making bills to circulate as money, without authority, penalty, 3268
Signing such bills, passing them, penalty, 3269–70
Passing any bill less than five dollars, 3271
Indictment for, good without describing bill, 3272

BARGAIN.

Covenants of warranty implied by use of in a deed, 1314

BARGES.

See "Engineers and Steamboats."

BASTARDS.

Inherit from and transmit to the mother and her kin, 1578–9
See "Legitimation and Adoption of."
Divorce for pregnancy of wife bastardizes the issue, 1975

BASTARDY, PROCEEDINGS IN.

Father arrested on complaint of mother, bond to appear at court, 3799–3800
Bond returned to court, committed in default of bond, 3801–2
Subpœnas for witnesses, proceedings in default of appearance, 3803–4
Discharged on giving bail in one thousand dollars, issue made up, 3805–6
Each party examined, bond for support of child if guilty, 3807–8
Judgment on failure to give the bond, 3809
Execution on the bond on failure to pay instalments, 3810
Bond may be taken after court by Judge of Probate, 3811
On filing the bond and paying costs, judgment discharged, 3812

Judgment on failure to appear after two writs of arrest, 3813
How discharged when arrested, 3814
Money received applied to support of child, 3815–16
Guardian appointed for the child, 3817
Death of child or marriage of parents vacates the bond, 3818
Costs against complainant on verdict for defendant, 3819
Who parties on the record, appeals, fees, 3820–1–2

BENEVOLENT SOCIETIES.

Property of exempt from taxation, 390

BETTING.

See "Gaming."
On elections, penalty for; by officer, imprisonment for, 363

BIGAMY.

Definition of, how punished, 3232
Excused after absence of husband or wife five years, 3233

BILLIARDS.

Taxes on license of table, 397

BILLS TO CIRCULATE AS MONEY.

See "Banks," &c.

BILLS IN CHANCERY.

See "Chancery."

BILLS OF EXCHANGE AND PROMISSORY NOTES.

See "Banks," &c., "Penal Bill," "Bonds," "Notes," &c.
Payable at a bank or banking house, negotiable paper, 1525
Other instruments also, as to grace, protest and notice, 1526
No grace or notice on other contracts, 1527
If due on Christmas, 4th of July, or 1st of January, payable the day before, 1528
If payable to bearer or fictitious person, to whom due, 1529
All contracts in writing assignable by indorsement, subject to set off, 1530–1
Acceptance of bill to be on it in writing, 1532–3
Promises in writing to accept equivalent to acceptance, 1534
Damages allowed for breach of promise to accept, 1535
Retaining bill more than twenty-four hours is acceptance, 1536
Damages on inland and foreign bills for non-payment, 1537
Includes all charges but interest and protest fees, 1538
Damages includes exchange if payable in dollars, 1539–40
Damages on protest for non-acceptance, 1541
Notice of protest, where sent, 1542
Maker of notes not negotiable sued at first term to charge indorser, 1543
If note of less than fifty dollars, sued in thirty days, 1544
Suit waived only by written consent, excuses for not suing, 1545-6
Irregular indorsements require suit, 1547
Indorser pays costs of suing maker, 1548
Inland and foreign bills defined, 1549
Penalty for issuing bills to circulate as money, 935

BILLS OF EXCEPTIONS.

See "Appeals."
Either party may take during trial; bill to state the point ruled, 2353-4
Charges asked to be in writing, and given or refused, as asked, 2355
Misdemeanor in judge to refuse to sign, evidence to the supreme court of such refusal, 2356
Plaintiff forced to non-suit may take bill of exceptions, 2357
To be signed in term time, or ten days after, by written consent, 2358

BILLS.

Of review, ne exeat, creditors, &c., see "Chancery, Proceedings in."

BOATS.

See "Steamboats," &c. "Engineers and Steamboats," "Admiralty, proceedings in," "Attachments of steamboats," "Bridges, Ferries, &c."

BONDS.

See "Bail," "Attachment," "Replevy," "Admiralty," "Forthcoming bonds," "Executors and Administrators," "Guardians," "Injunctions," "State bonds," "Trial of right of property," "Detinue."
When required by law, sufficient without seal, 9

Bonds, official.

See title of each officer.
How conditioned and payable; endorsed with date of approval, 118–19
Penalty for improperly approving, 120
Time of filing in Secretary of State's office; in Circuit Clerk's, 121–2
In Judge of Probate's office and in other cases. 123–4
Failure to file, vacates office; if not approved not received, 125–6
Fine for acting before filing; notice of failure to solicitor, 127–8
Date of filing to be indorsed; legal effect; who may sue on, 129–30
Not discharged by single recovery, 131
Has full legal effect though irregular, 132
Provisions as to, applicable to offices hereafter created, 133
Copies of evidence, 2295
Person injured may sue in his own name, 2154

Additional bonds of officers.

When required of comptroller and treasurer, 134
Of officers whose bonds approved by circuit judge, 135
When approved by judge of probate, 136
Requisition of, to be written, its contents, 137
Time allowed for giving; failure to give vacates office, 138
Similar to the first and filed in same office, 139
Fine for neglect to file; same legal effect as first, 140–1
First bond remains in force; sureties, right of contribution, 142–3

Application of sureties on official bonds for discharge.
Made to approving officer, in writing; contents sworn to, 144–5
Notice to principal to give new bond; failure, vacates office, 146–7
If additional bond given, approved and filed with first, 148
Penalty for failure to file; securities when discharged, 149–50
When new bond goes into effect; applicants only discharged, 151–2
Contribution among sureties on, 153

BOUNDS.
See "Prison Bounds."

BOUNDARIES.
Of the State generally; between it and Georgia, 15–16
Between Alabama and Florida, 17
Of counties, same as now established, 10

BOWIE KNIVES.
See "Murder."
Tax on, 391
Carrying concealed, how punished, 3273

BRANDING.
See "Perjury," "Offences by Slaves,"

BRANDS.
See "Marks and Brands."

BREACHES OF THE PEACE.
See "Criminal prosecutions, proceedings to keep the peace."
See "Sheriff's duty of in keeping the peace."

BRIBERY.
See "Jurors," "Elections."
Conviction of, disqualifies elector, 171
Punishment for bribing or offering bribe to officer, 3201
Acceptance of bribe by officer; punishment, 3202
Bribing or offering to bribe officers of court or juror, 3203
Crime complete though juror not yet sworn, 3204
Acceptance of bribe by juror or officer of court, 3205
Stocking jury; bribing officer to, or conniving at, 3206–7–8

BRIDGES, CAUSEWAYS AND FERRIES.
See "Roads."
Rate of taxation of, 391
May be established by court of commissioners and tax laid to build them, 1189
Bridges on the line built at joint expense of counties, 1190
License for ferries granted by the court and bond required, 1191–2
Who entitled to license; damages to land owner, 1193–4
On county line granted by either county, 1195
Not within two miles of each other except near a town, 1196
Suit on bond by party injured; damages for detention at, 1197–8
Penalty for taking excessive toll, 1199
Taking toll without license; neglect to keep bridge, boats, &c., in order; penalty, 1200
Injury to bridge or causeway, boats, &c., 1201
River may be forded at ferry; damage for injury by defect of bridge, 1202–3
Penalty on owners of chartered bridges, &c., for not repairing bridges, &c., 1204

BRIGADE QUARTERMASTER GENERAL.
Reports condition of arms of his brigade to Quartermaster General, 553

BURGLARY.
Defined; how punished, 3183–4
By a slave, punishment of, definition of dwelling house, 3308–9
Breaking and entering dwelling house by slave in day time, 3310

BURNING.
See "Arson."

CA. SA.
See "Executors," "Bail," "Arrest."

CANAL.
See "Water-works and Dams," "Malicious Mischief."

CAPITAL OFFENCES.
See "Offences," "Execution."
No limitation of prosecutions for, 3370
Trial of slaves for, 3319
Trial of slaves for insurrection, 3321

CAPITOL.
Governor assigns rooms in to the officers, 50

CARRIERS.
Embezzlement by, 3144

CARDS.
See "Gaming."
Taxes on, 391
Playing at with negro, 3256

CAUSE OF ACTION.
Indorsed on summons issued by justice, 2706

CATTLE.
See "Marks and Brands," "Fences," "Estrays."
Marking or branding, or altering marks of, 3139–40

CAUSES.
See "Actions." See "Chancery, suits in."

CAUSEWAYS.
See "Bridges, Causeways, and Ferries."

CENSUS.
Of the State to be taken every six years, Con. Ala., page 33.

CERTIFICATES.
Of Elections. See "Election," see "State Stock," see "Witnesses," "Jurors."

CERTIORARI.
See "Circuit Courts," see "Appeals from Justices and Certiorari."
Granted by Judge of Probate on judgment of justices, 674
Writs of, granted by circuit judge, 629

CESSIONS TO UNITED STATES.
How and when made, 23

CHAIN CARRIERS.
See "County Surveyors."

CHALLENGE OF JURORS.
See "Jurors," see "Duelling."
Of Electors, see "Elections."

Publishing as coward for not accepting; penalty, 3276
Printer obliged to testify, penalty for refusal, 3277.
Giving or accepting, how punished, 3089

CHANCERY, COURTS OF, AND CHANCELLOR.

State divided into three divisions, and thirty-nine districts, 596-7
What districts compose the respective divisions, 598-9
A chancellor of each division elected by General Assembly for six years, 601
Ordinary jurisdiction of the courts; extraordinary, 602-3
Punish contempts by fine and imprisonment, 604
Administer oaths in proceedings before them, 605
Jurisdiction throughout State, but hold courts in their own divisions, 606
Place of holding court in each district, 607
Terms of court in Southern division, 608
In the middle division, 609
In the Northern division, 610
Proceedings if chancellor disqualified, 611-12
Extra term may be held on thirty days' notice, 613-14
Salary of chancellor, $1500. 615
Sheriff of the county the officer of the court, 624
See "Register."

CHANCERY, PROCEEDINGS IN.

See "Injunction," "Appeals," "Sureties," "Divorces," "Dower."

Cases of which it takes jurisdiction—The bill, answer, replication, and demurrer.

Jurisdiction of equity cases, when defendant resides in the district, or when cause of action arose or lien is to be enforced, 2872
Joint demand may be prosecuted against one defendant, 2873
Suit commenced by *bill* to the chancellor, 2874
Bill filed in defendant's district, or if injunction of judgment, in district in which judgment was obtained, 2875
Bill to contain only a statement of facts and prayer for relief, 2876
Complainant may waive oath to answer, which is then no evidence, 2877
Summons issued and copy served on each defendant, 2818
Sheriff to serve the copies on defendants, 2879
Each defendant may have copy of bill; taxed as costs, 2880
Summons executed in another county, returned by mail, 2881
Mailed within five days of service, 2882
Sheriff liable for failure to execute and return; excuse, 2883
Order of publication as to non-resident; affidavit, 2884
Fee for publication paid register beforehand, 2885
Any defendant may have copy of bill; taxed as costs, 2886
Non-resident plaintiff to give security for costs on notice, 2887
Order of publication to conform to rules of court, 2888
Unknown defendant proceeded against by publication, 2889
Answer filed in thirty days, or decree pro confesso, 2890
Answers of resident compelled by attachment, 2891
Party arrested under attachment discharged on bond, 2892
Sheriff and sureties liable for failure to return attachments, 2893
Suit directed on forfeiture of the bond, 2894
Defendant sent to jail until he files an answer, 2895
Oath to answer, by whom administered, 2896
Defendant may show cause against answering fully, 2897
Application to answer specially may be resisted, 2898
Separate pleas dispensed with, and to be inserted in the answer, 2899
Demurrer to state the grounds, and none others considered, 2900
Replication dispensed with, 2901
Answer evidence, if responsive, unless oath to was waived, 2902

Amendments, exceptions, filing of papers, and serving notices.

Amendments of course, to bills before answer and to summons before service, 2903
Allowed after copy of bill delivered by paying for copy. 2904
After answer on paying costs of amendment, also to answer, 2905
After publication of testimony, only allowed by chancellor, 2906
Answers to amended bills filed as originals, 2907
Objections to parties, &c., set for separate hearing. 2908
If objection not made before hearing, decree as to those in court, 2909
Papers, pleadings, &c., indorsed with date of filing. 2910
Notice of amendments, &c., may be served on solicitors, 2911
Notice to party in default by entry on order book, 2912
Exceptions to answers to be filed in sixty days. and day fixed, 2913
Defendant may examine complainant on interrogatories, 2914
Exceptions to interrogatories heard by register; appeal, 2915
Defendant may set up facts in answer, and require answer, 2916
This considered as cross-bill, and heard with the suit, 2917
Defendant may waive oath to such answer, &c., 2918
Answer to such cross-bill as to original bill, 2919

Evidence in Chancery.

See "Evidence."
Testimony taken by interrogatories under rules of the court, 2920
Rules of evidence same as those in common law courts, 2921
Testimony taken by complainant after answer filed or decree pro confesso, 2922
By defendant after filing answer, 2922
Exhibit proved by affidavit before register thirty days before hearing, 2923
Commissions issued by register; when returnable, 2924
Copy of interrogatories served ten days before issue, 2925
Filed in register's office if party and counsel non-residents of the district, 2926
Rebutting interrogatories may be filed within ten days, 2927
Limitations of suits as at common law, 2928
Suit commenced by filing the bill, 2929
Attendance of witnesses before commissioners enforced, 2930
Defaulting witness proceeded against in circuit court, 2931

References to the Register.

Party obtaining reference to bring up the matter before him, 2932
Register to fix a day and give notice to the other party, 2933
Register's authority in conducting the examination, 2934
Either party can examine the other as to any item, 2935
Testimony in the suit may be examined by register, 2936
Exceptions to his decisions reserved in writing, 2937

Decrees pro confesso.

Entered on failure to answer, demur, or plead for thirty days, 2938
Allegations of the bill admitted by; suit not heard on day of taking, 2939-40
Defendant may appear on reference, or contest decree on bill after, 2941
Set aside on payment of costs and filing answer before publication, 2942
Defendant by publication may set it aside on paying costs, &c., 2943
Chancellor may permit an answer after publication, 2944
Decree against defendant without service not final for eighteen months, and copy to be sent him, 2945
Decree opened on petition, within eighteen months, and case tried, 2946
Testimony on file may be read by either party, 2947
Representatives of parties without service may come in, &c., 2948
Bond of indemnity required before execution on such decree, 2949
Decree final after service of copy six months without petition, 2950
Proceedings not applicable to infants or married women, except as to their separate estates, 2951

Bills of review, ne exeat, equitable attachments, and other writs of seizure.

Decree may be suspended by bill of review with bond and security, 2952
Application to file made in three years, 2953
Writs of ne exeat and equitable attachment, when issued, 2954
Answers in such cases examined in vacation, 2955
Equitable attachments also on legal demands against equitable assets, 2956
Issued either before or after judgment, 2957
Equitable assets to be specified, and copy of bill served, 2958
Property levied on may be replevied; replevy bond, 2959-60
They have a lien from time of levy; execution on replevin bond, 2961-2
Chancellors, circuit judges, and registers, may issue, &c., 2963
Such writs also issued as ancillary to original suits, 2964
Bond and affidavit made by plaintiff, 2965
Property restored, on giving bond and security, 2966
If no bond given for five days, delivered to plaintiff on bond, 2967
Writ, bond, papers, &c., returnable to register, 2968
Decree for execution, if plaintiff proves his claim, 2969
Liability of plaintiffs and sureties, if cast, 2970
See "Injunctions," page 531.

Creditors' bills.

Filed to collect judgments, or discover secret trusts, 2987
Also to discover collusive judgments, or fraudulent conveyances, 2988
Answers compelled to such bills, but do not subject to prosecution, 2989-90

Issues out of chancery.

Court may direct an issue to be tried by jury, 3001
Tried as other cases, but examination of parties may be directed, 3002
Chancellor may order a jury, and try the issue before him, 3003

Decrees and costs.

Provisions as to liens and priorities same as of judgments, 3004
Decrees for conveyances operate as conveyances; executed by commissioner, 3005
Made in writing in term time, difficult cases held up six months, 3006
Costs imposed at discretion of chancellor, execution against security, 3007
Decrees and orders enforced by attachment or sequestration, 3008
Decree ordering act to be done to fix the time, 3009
Attachment on affidavit of failure to perform, 3010
Sequestration issues, if attachment returned not found, 3011
Chancery or common law process may be issued, 3012
Process from court, when returnable, 3013

Sheriff liable for failure to execute process, &c., as in other courts, 3014
Rules of practice of the supreme court recognized, and authority granted to make new rules, 3015

CHANGE BILLS,

Liability for putting in circulation, damages without protest, 935
Corporations forfeit their charter by paying out, 936

CHANGE OF VENUE.

See "Venue."

CHARGES TO JURY.

To be given or refused as asked, and asked for in writing, 2355
Court to state the evidence and charge the jury, 2274

CHARTERS.

See "Corporations."

CHILDREN.

See "Divorce and Alimony," "Legitimation and Adoption of," "Bastards," "Married Women."
Posthumous, take under grant to, 1303

CHURCHES.

Exempt from taxation, 390
Penalty for defacing, 3113

CIGARS.

Tax on sales of, 391

CIRCUS.

Tax on license of, 397

CIRCUIT COURTS, JUDICIAL CIRCUITS AND CIRCUIT JUDGES.

See "Elections of Circuit Judges," "Trustees, Removal of," "Clerks of Circuit Court," "Sheriffs."
State divided into nine judicial circuits, 625
A judge elected by the people for each circuit, 173
Holds office six years, (see amendment of Constitution, page 49,) 626
Elections held on first Monday of May, 177
Vacancies filled by Governor till next election day, 627
Authority and jurisdiction of the court, 628
Authority of circuit judges, 629
They alternate with each other in holding courts, 630
Removal from circuit vacates office, 631
Terms of the court in first circuit, 632
In the second circuit, 632
In the third circuit, 632
In the fourth circuit, 632
In the fifth circuit, 632
In the sixth circuit, 632
In the seventh circuit, 632
In the eighth circuit, 632
In the ninth circuit, 632
If judge absent, sheriff adjourns court till third day, 633
Special terms, when held, 634
Witnesses subpœnaed to special term to try felony, 635
Notice of special terms; subpœnas and process to, 636-7
Deduction from judge's salary for failure to hold court, 638
Excuses for failure; trial of cause if judge incompetent, 639-40
Sheriff to summon three constables to attend as bailiffs, 641-2
Salary of circuit judge is fifteen hundred dollars per annum, 643

CIVIL LAW.

Rules of, used in computing kindred, 1575

CLAIMS.

To property attached or levied, see "Trial of Right of Property."
To property levied on by execution from probate court, 676
Acts relating to claims against United States still in force, 10

Against the state.

See "Comptroller."

Against a county.

How audited and paid; barred in twelve months, 773-4-5

Against insolvent estates.

See that title.

Against other estates.

See "Estates of Deceased Persons."

CLAIM AND CLAIM BONDS.

See "Trial of Right of Property."

CLERGY.

Benefit of abolished, 3633

CLERK OF CIRCUIT COURT.

See "Summary Judgments," "Elections."
Elected by people of the county for four years, see Con. Ala. 175
Elections for on first Monday of August, 644
Vacancy in office filled by the circuit judge, 645
Notice of the appointment given by the judge, 646-7
Bond to be approved by judge; additional bond, 648
Judge of probate to give notice of failure to give bond, 649
Office at the court house, 650
Duties of the circuit clerk, 651
Authority, 652
To permit access to records, 653
Penalty for neglect of duty by, see note.
To keep direct and reversed indexes, &c., 654
On payment of judgment to, to collect sheriff's costs, 655
Causes of removal of, and how removed, 656-8
Offices of examined by committee under order of court, 659
Stationery supplied to by the county, 660
Duty in relation to tax on suits for the county, 778-81
Collects tax for state on each official seal, 408-9
To return statement of taxes collected, 781-3
Fee bill of clerk, 3043
Summary proceedings against, 2616

CLERK OF SUPREME COURT.

See "Summary Judgments Against."
Appointed by judges for five years, 578
Give bond, and additional bond when required, 579-80
Office at the capitol, office hours, 581
Duties of, and authority, 582

Final record made by binding judgment with the transcript, 583
To be bound in volumes, 584
Taxes on suits in supreme court collected by, 403-4-5
Proceedings to enforce account and settlement of, 406
Fee bill, (note, changed by act of 1851-2) 3045

CLERK.

Embezzlement of property of employer by, see "Embezzlement."

CODE.

See preface and certificate.
Meaning of certain words and terms used, 1
Definition of other terms, 2, 3, 4, 5, 6, 7, 8
Public acts repealed by, 10
Private and local acts, and certain others retained, 10
Acts of 1851-2 supersede provisions of 11
Actions commenced before adoption, not affected by, 12
Computation of time under, how made, 13
Offences, penalties and forfeitures incurred before not released, 14
Duties of tax assessor and collector, when to commence under, 422, 452

COLLATERALS.

No representation among, exception, 1574

COLLECTOR OF TAXES.

See "Tax Collector."

COMMISSIONS FOR COLLECTIONS.

See "Fee Bills."

COMMISSIONS TO TAKE TESTIMONY.

See "Evidence," "Chancery, Evidence in."

COMMISSIONERS OF DEEDS.

Appointed by Governor, 52
Of other states, to collect and pay over tax on seal, 409
Summary judgments against for taxes collected, 2629

COMMISSIONERS.

See "Court of County Commissioners," "Depositions."

COMMITMENT OR DISCHARGE ON BAIL.

See "Arrest."
See "Criminal Prosecutions, commencement of."
See "Fugitives from Justice."

COMMUTATION.

See "Pardons," &c.

COMPENSATION.

See "Fees, and Title of each Officer."

COMPLAINTS IN CRIMINAL CASES.

See "Criminal Prosecutions."

COMPLAINT.

See "Pleading," forms of, page 551-4.
Is in place of declaration and served with summons, 2234

COMPOUNDING OF FELONIES.

Fine for; conviction had for, though principal not tried, 3220-1

COMPROMISES.

Sustained without new consideration, 2283

COMPTROLLER OF PUBLIC ACCOUNTS.

See "Treasurer," "Taxation," &c., "Clerk of Supreme Court."
Elected by General Assembly for two years; Con. Ala., page 38.
Comptroller gives bond approved by governor, 59
His office hours, seal and device, 60-1
Certifies copies of office papers, 62
Salary of $2000 and fees, 63
Governor has general superintendance of his office, 64
His office examined by committee of general assembly, 34-5-6-7
Duty of in relation to state finances, 365
May examine holder of claim on state on oath, 366
Must not draw warrant for defaulter, 367
Not to receive state funds without express authority, 368
Accounts or claims on the state to be sworn to, 369
To furnish judge of probate registers of lands sold by United States, 435
May hire a clerk to make out the registers, 439

CONCEALED WEAPONS.

Carrying bowie-knife or air-gun concealed; penalty, 3273
Carrying other concealed weapons without cause, 3274
Indictment for, what to state; excuse for carrying, 3275

CONCERTS.

Tax on, license of, 397

CONDITIONAL ESTATES.

See "Remainders."

CONFEDERATION, ARTICLES OF

Page 1.

CONFESSION OF JUDGMENT.

See "Sureties."
Releases errors, 3036

CONGRESS.

See "Elections."
Elections for; when held, 174

CONGRESSIONAL DISTRICTS.

State divided into seven districts, 31
Returning officers, (note.)

CONSPIRACY.

See "Rebellion"
Defined; none other punished, 3223-4

CONSTABLE.

See "Elections of justices and constables;" see "Justices, proceedings before; see "Summary judgments;" see "Criminal cases, prosecution of."
When elected, 179
One elected for each election precinct for three years, 173-715
Gives bond; is a conservator of the peace, 717-718
Attends circuit court when summoned; executes process and pays over money collected, 719
Removal from precinct vacates office, 720
Notice of vacancy given to sheriff by justice, 271
Penalty for failure to give notice, 272
Fees of in civil cases, 3050

Fees in criminal cases, 3988
CONSTITUTION OF THE STATE OF ALABAMA AND AMENDMENTS.
From page 29 to 50. "Elections on amendments;" proceedings to amend; page 45.
CONSTITUTION OF THE UNITED STATES.
Page 12 to 25.
CONSTRUCTION, RULES OF
See "Conveyances," &c. 1298 to 1342
CONTAGION AND CONTAGIOUS DISEASES.
See "Hospitals."
CONTEMPTS.
See title of each court for extent of its powers.
Power of courts to punish for, 561–568
CONTEST OF ANSWERS.
See "Attachment, collateral issues."
CONTESTED ELECTIONS.
See "Elections."
CONTINUANCE OF CAUSES.
Action tried at first term if summons executed twenty days, 2257
CONTINGENT REMAINDERS.
See "Conveyances," "Remainders" in lands converted into executory devises. 1301
CONTRACTS.
See "Void Contracts,"
When to be in writing. See "Frauds and Perjuries."
All written contracts assignable. See "Bill of exchange," &c.
CONVEYANCES.
See "Dower"—"Wills."
Of lands.
Any person of twenty-one years may convey lands by deed or will, 1265
To be written and attested by a witness in writing, and two if party cannot write, 1266
Acknowledgment of conveyance dispenses with attestation, 1267
Registration of
Recorded in office of judge of probate, 1268
Books of record kept; mode of recording and certificate, 1269
Receipt given on delivery; delivery operates as record, 1270
Access to books permitted; certified copies given, 1271
Penalty for neglect of such duties by the judge, 1272
Probate and acknowledgment of.
Of land recorded in county where situated, 1273
Record of, without probate or acknowledgment, is notice of its contents, 1274
If acknowledged or proved and recorded, evidence without other proof and if lost, copy evidence, 1275
Who may take proof or acknowledgment of, 1276
How taken in other States and countries, 1277
Powers of attorney proved or acknowledged as, 1278
Form of acknowledgment of conveyance, 1279
Form of probate of conveyance, 1280
To be evidence without proof to be acknowledged or attested by two witnesses, 1281
By married women of certain property, void unless attested by two witnesses, 1282
Mortgages and deeds of trust of personal property, where recorded, 1283
Instruments showing liens or trusts on property removed to the State, 1284
Deed showing personal property to be held by tenant for life or years, when brought to this State, recorded, 1285
Choses in action not personal property, 1286
Protection to purchasers and creditors against dormant conveyances and loans.
Mortgages to secure debts created at the time, recorded in three months, 1287
Other mortgages, &c., have a lien only from record, 1288
Defeasances of absolute estates to be recorded, 1289
Remainders and estates on condition void as to creditors, &c., after five years, without record of deed, 1290
Conveyances of personal property to secure debts have no lien until recorded, 1291
Absolute conveyances to secure debts also included, 1292
Marriage settlements to be recorded, to bar creditors, 1293
Written loans of personal property and estates by way of remainder, reversion, &c., void as to creditors if not recorded in three years, 1294
Possession under loan for three years without suit, subjects property to creditors, 1295
Conveyances to minors (except by will) to be recorded if parent has possession, 1296
Parol gifts void without possession; possession of parent is possession of the child, 1297
Construction of and general provisions as to.
Attornment by tenant dispensed with, 1298
All conveyances construed as fee simple if not limited, 1299
Fee tail converted into fee simple, 1300
Contingent remainders in lands construed as executory devises, 1301
Limitation to "heirs of the body," "heirs," or "issue," means issue living at the death, 1302
Posthumous child takes under limitation to heirs, issue, children, 1303
Rule in Shelly's case abolished, 1304
Tenant for life cannot defeat dependent estates, 1305
Statute of uses; transfers possession to the use, 1306
Not to prevent the creation of legitimate trusts, 1307
Perpetuities forbid, but other settlements permitted, 1308
Extent of limitation which is permitted, 1309

Trusts for accumulation, except for minors limited to ten years, 1310
Terms of years not to extend beyond twenty years, 1311
No survivorship between joint tenants, 1312
Warranties of tenant for life void as to remaindermen, &c., 1313
Covenants of warranty implied from grant, bargain or sell, 1314
Writing importing to be sealed so held, 1315
Livery of seisin effected by deed, 1316
Tenant for life can only convey his own estate, 1317
Not necessary to see to application of trust funds, 1318
Power to sell land passes with the debt, 1319
Trusts in lands created only by writing, implied or constructive trusts excepted, 1320
Trusts void as to parties without notice, 1321
Record of declaration of trust is notice, 1322
Trust estates do not descend to heir of trustee, 1323
Reservation of power of revocation, subjects to debts, 1324
Power of disposition in owner of particular estate; effect, 1325
Effect of, to one having no estate, 1326
If no estate limited over, equal to a fee 1327
Absolute power of disposition defined, 1328
Any power may be reserved, which could be granted, 1329
Execution of power good to extent of authority, 1330
To be executed as conveyances, or as wills, 1331–2
To be executed by sufficient instruments in all cases, 1333
Appointment among several to be equal unless discretion is given, 1334
Or if trustee having power of appointment, dies, 1335
Consent of another when required; to be in writing, 1336
Grand children take as children under such power, 1337
Beneficial powers and trusts irrevocable unless expressly reserved, 1338
Devise to executors to sell or power to sell by, may be exercised by an administrator, 1339
Joint powers executed by survivors, 1340
Beneficial powers liable in equity to creditors, 1341
Powers of attorney to sell not embraced, 1342

Mortgages and deeds of trust—entry of satisfaction of,

On payment of, satisfaction entered of record; penalty for refusal, 1343–4

Imperfect titles—how perfected.

On death after written contract to convey, representative to convey, 1345
Judge of probate may compel conveyance, 1346
Application to, in writing; proceedings thereon, 1347
Notice to guardians of minors, &c. 1348
Fee of probate judge, 1349

Grants by the State or United States.

Made by patent attested by governor and secretary of state, 1350
Grants and patents to be recorded by secretary, 1351
Patents issue after payment of the purchase money, 1352
Copies of patents recorded, are evidence without proof, 1353

CO-OBLIGORS.

See "Joint Obligors."

COPIES.

See "Conveyances."
Of official papers, evidence, 2293

CORONER.

See "Sheriff," "Executors and Administrators."
Summary judgments against, 2601
Appointed by court of county commissioners for three years, 800
Removable for cause; his oath and bond; failure vacates office, 801-2-3
Is the jailor when sheriff is in custody, 804
When to discharge duties of sheriff, 805
Also when sheriff proved to be interested, 806
Special coroner, when and how appointed; his duties, 807-8
Additional bond required when acting as sheriff, 809
Failure to give it, vacates his office, 810
Liable to same extent as sheriff for neglect, &c., 811

CORONER'S INQUEST.

To summon jury if a death occurs suspiciously, 3763
Jury sworn, five required to render verdict, 3764
Witnesses subpœnaed; physician called in, 3765
Sheriff to serve subpœnas and defaulters returned, 3766
Witness refusing to answer bailed or imprisoned, 3767
Jury to return a verdict and make an inquisition, 3768
Inquisition returned to court, and witnesses recognized, 3769
Party implicated to be arrested and examined by coroner, 3770
Money on person of deceased paid to county treasurer, 3771
Placed to credit of county; paid to representative in six years, 3772

CORPORATIONS.

See "Religious Societies," "Towns," "Manufacturing Companies," "Free Banking Associations," "Foreign Corporations," "Tax Assessor," "Banks and Banking."
Taxation of when chartered by the state, 391
Forfeit their charters by paying out change bills, 936
Having road or bridge to keep it in order, penalty, 1204
Powers of private corporations incident to all, 1481-2

No other powers to be exercised, not expressly granted, 1483
Banking privileges not exercised by, without express power, 1484
Stockholders liable for stock not paid up, 1485
Majority of board can act; non-user of two years dissolves, 1486-7
Failure to elect officers does not dissolve, 1488
Power to settle up business after dissolution, 1489
Affairs, how wound up on dissolution, 1490
Authority of trustees; chancellor may extend the time, 1491-2
Liable to representative for act of agent causing death of intestate, &c., 1941
Attachments issue in favor of or against, 2512
Must give security for costs before commencing suit, 2398
Proceedings to vacate charter of, and prevent usurpation of offices.
Any citizen may proceed for a forfeiture in the name of the state, 2651
Circuit judge to direct proceedings, if public good requires; any one may do so on securing the costs, 2652
Proceedings had in the county of its principal office, 2653
State proceeds when an office or franchise is usurped, 2654
Proceedings directed by circuit judge or party securing costs, 2655
Brought in circuit court of county where act was done, 2656
Informant joined as plaintiff; action abates on death of informant, unless security given by another, 2657-8-9
Complaint to state the ground of proceeding, 2660
In proceedings for usurpation, real officer to be named, 2661
Judgment on rights of both parties, 2662
Judgment in favor of such party entitles him to the office, 2663
Validity of elections not tried in this manner, 2664
Judgment against usurper excludes him, 2665
On judgment of forfeiture, corporation dissolved, 2666
If state fail, costs as in state cases; informant pays costs, 2667
On abatement, securities of informant pay costs, 2668
Execution against informant, and surety for costs, 2669
Appeals by either party on giving security for costs, 2670
If state fail, judgment final; solicitor's fee twenty dollars, 2671-2

COSTS.

See "Fees in Criminal Cases."

COSTS IN CHANCERY.

At discretion of chancellor, 3007

COSTS IN CIVIL ACTIONS AT COMMON LAW.

See "Appeals from Justices," "Fees of Officers."
Successful party recovers costs, 2375
In torts no more costs than damages, if verdict less than twenty dollars, 2376
When usury has been taken, defendant recovers costs, 2377
Costs of proving set-off allowed defendant, 2378
Witnesses allowed one and one-half dollars per diem and mileage, 2379
Certificate of attendance given witness by the clerk, 2380
Attendance to be proved in five days from adjournment, 2381
Witness to charge only one side with attendance, 2382
Judgment for costs against beneficial party, 2383
Costs of transcripts and office papers taxed in the bill, 2384-5
Costs on plea, "since the last continuance," 2386
Witness fees taxed and collected for them, 2387
Witness refused payment excused from attendance, 2388
On abatement by defendant's death, plaintiff pays costs, 2389
Attorney's fees taxed for a defendant who succeeds, 2390
A defendant succeeding entitled to his costs, 2391
Only two witnesses taxed, proving one fact; exception, 2392
Motion to refuse costs of superfluous witnesses at trial term, 2393
Motion to re-tax if costs excessive, 2394
On filing petition to re-tax, with objections, collection suspended, 2395
Fees of county surveyor, when taxed as, 817-18
Bill of, indorsed on all executions, 2425
Execution against plaintiff for his costs, if defendant insolvent, 2426
Security for costs.
To be given by non-residents, or action dismissed and costs taxed to the attorney, 2396
If plaintiff removes, to be given or case dismissed, 2397
Corporations to secure before issue of summons, 2398
On judgment for defendant, judgment against sureties, 2399
On commencing such suits without security, clerk and counsel both liable for costs, 2400

COTTON.

See "Factor."
Name and county of owner marked on bales of, 930
Actual weight of bales intended in all contracts, 931
Penalty for deduction from weight, 932
Cotton to be stored under cover in Mobile, or no charge, 933
Penalty of five dollars a bale for violating last section, 934

Fraudulent packing of, how punished, 3258
Selling by false sample, cutting bale without consent of owner, 3259-60
Sampling without owner's consent, refusing to deliver sample, 3261-2
Buying cotton taken unlawfully from bags, 3264
Punishment of factor permitting it to be so taken, 3265
Punishment of factor appropriating to his own use, 3266
Damage to cotton bales by hooks, &c., on steamboat, 898

COUNSEL.

See "Attorneys," "Criminal Prosecutions."
Right of accused to, secured by constitution, page 30.

COUNTIES.

See "Court of County Commissioners."
Number and names of the counties of the State, 25
Jurisdiction over navigable streams bounding, 24
Apportionment of representatives among, 26
Are bodies corporate; conveyances to vest title in, 763-4
Court of county commissioners controls its property, 765
And erects and controls county buildings, 766
Sheriff has charge of the court house, 767
Special tax to provide county buildings, 768
Jail, its character; penalty for neglect to build, 769-70-71
Grand jury to inspect it, 772
Claims against county, how audited, registered, and paid, 773
Withdrawn if rejected; barred in 12 months, 774-5
Boundaries of counties as formerly established, 10

COUNTY REVENUE.

Raised by levy of not more than 100 per cent on state tax, 776
Collected by tax collector; court directs funds receivable, 777
Two dollars taxed for county on suits in circuit court, 778
Judge of probate collects county per centage on licenses, &c., 779
Judge of probate and clerk of circuit court to return statements, 780-1
Sheriffs to return statements; penalty for not returning them, 782-3
Penalty on county treasurer for failure to give notice of, 784
Proceedings against county defaulters; pay of tax collectors, 785-6

COUNTY BUILDINGS.

See "Jails," "Court House."
Special tax levied to erect; penalty for not erecting jail, 768-9-70

COUNTY TREASURER.

Appointed by court of county commissioners, 787
Gives bond; failure to do so vacates his office, 788-9
Sworn to discharge his duties; duties of, 790-1
Certain officers ineligible; books supplied by county, 792-3
His accounts, if approved, to be recorded, 794
Proceedings against, on failure to pay allowed claims, 795
Books and vouchers of, examined by a committee, 796
Neglect or breach of duty by, is a misdemeanor, 797
Proceedings on death, resignation, or removal of, 798
Pay of county treasurer; form of his accounts. 799

COUNTY SURVEYOR.

Appointed by court of county commissioners; term, 812
Oath of, bond, causes of removal, 813-14
Makes surveys under order of court or on engagement, 815
Chain bearers, plats made and fees indorsed thereon, 816
Fees of, when taxed as costs; plats, when evidence, 817-18
Liable for damages caused by errors, 819
Fees and pay of chain bearers, 820

COURT HOUSE.

See "Court of C. C.;" see "Counties."
One of the places of voting in each county, 183
Under charge of the sheriff of the county, 767

COURTS.

See "Senate;" see "Chancery and Courts of Chancery;" see "Supreme Court," "Justices," "Circuit Courts," "Courts of Probate," "Courts of County Commissioners," see "Clerks," "Registers," "Sheriffs."
All judicial power vested in certain courts, 559
Judge not to sit if related to party, or interested, 560
Summary powers of, to issue attachments and punish contempts, 561
Powers incident to all courts, 562
Mode of enforcing authority, 563
Records of not to be removed but in case of danger, &c. 564
Minutes to be read each day in open court and signed by judge, 565

COURT OF COUNTY COMMISSIONERS.

See "Poor," "Water-courses," &c., "Bridges, Causeways, and Ferries," "Roads," "Road Precincts," "Election Precincts," "County Surveyor," "Tax Assessor," "Tax Collector," "County Treasurer," "Hospitals," "Patrols," "Election of Commissioners," &c., "County Revenue," "Counties," "County buildings.
Composed of commissioners and judge of probate; court of record, 697
Commissioners elected by people of county; term of office, 173-8

Vacancy in board of commissioners, filled by court, 698
Not eligible to county offices; quorum of the court, 699-700
Regular and special terms of the court, 701-2
Has jurisdiction of roads, bridges, causeways, and ferries, 703
It controls county property; levies county taxes; audits claims against the county, and accounts of county officers; provides for the poor, and punishes for contempts, 704
Proceedings of, recorded by judge of probate, 705
Clerk appointed to do so in absence of judge, 706
Judge gives casting voice when court divided, 707
It establishes rates of surveyors' fees, 820
Assessment of taxes; correction of errors by, 440-41
Erects and controls county buildings, 766
Compensation of commissioners of for tax services. 499

COURTS OF PROBATE.

See "Court of County Commissioners," "Judge of Probate," "Executors and Administrators," "Estates," &c., "Legacy," "Distribution," "Guardians," "Apprentices," "Poor," "Dower," "Fees of Judge of Probate," "Partition of Lands."
Judges of elected by the people of each county, 173
Elections for held on first Monday in May, 177
Term of office of judge is six years; citizens of county eligible, 661-2
Vacancies filled by governor until election day, 663
Judge gives bond approved by circuit judge, 664
Bond recorded and filed by circuit clerk, 665
Party injured may sue on the bond, 666
Judges of are conservators of the peace, 667
Their offices at the court-house, and open every day, 668
To have a seal; private seal used till procured, 669
Original jurisdiction of matters of "Probate of Wills," "Guardianship," "Administration," "Apprenticeship," "Dower," "Partition of Lands," &c., 670
Summary punishment by for contempts, 671
Duties of the judge of probate, 672
Regular terms held on the second Monday in each month, 673
Court always open for certain purposes, 673
Special terms whenever necessary, 673
Authority and powers of judge of probate, 674
Process and orders from, how dated, signed and executed, 675
Claims to property levied on under execution from, 676-7-8-9
Process from, when returnable; neglect to execute it, 680-1
Rules of evidence same as in circuit court, 682
Case transferred to register if judge incompetent, 683
Stationery supplied by the county, 684
Willful breach of duty by judge a misdemeanor, 685
Duties of judge of, in relation to collection of taxes, 394 to 402
Fee bill of judge of probate, 3046

COVENANTS.

Of warranty implied from "grant," "bargain," or "sell," used in a deed, 1314

CREDITORS' BILLS.

See "Chancery."

CREDITORS OF INSOLVENT ESTATES.

See "Insolvent Estates." See "Claims."

CRIMES.

See "Offences," "Felonies," "Misdemeanors," "Petty Offences."

CRIM. CON.

Suits for barred in one year, 2481

CRIMES OR PUBLIC OFFENCES.

See Offences defined, divided into felonies, misdemeanors and petty offences; definitions of each, 3069-70-71-2-3-4

CRIMINAL CASES, PROSECUTION OF.

The complaint, commencement of the prosecution, warrant of arrest, examination, commitment, discharge or bail.

See "Arrest," "Limitation of prosecutions," "Jurors and juries," "Indictments," "Witnesses," "Trial," "Appeals in criminal cases," "Bail," "Forfeitures," "Pardons," "Jurisdiction, local."
"Complaint" defined; when warrant of arrest to issue, 3377-8
Complaint and evidence of witnesses to be reduced to writing and signed, 3379
Contents of depositions; if evidence sufficient warrant issues, 3380-1
Definition of and form of warrant of arrest, 3382
To whom directed; by whom to be executed; contents, 3383-4-5
Issued by judge of superior court executed any where in the state, 3386
Issued by a justice executed only in the county, but may be indorsed by justice in another county and then executed there, 3387
Officer may pursue to another county, and procure indorsement by magistrate, 3388
Magistrate to be satisfied before making indorsement, 3389
Not liable for making the indorsement, 3390
Prisoner when bailed by sheriff or deputy, 3391
Justice may bail for misdemeanor, 3392
Amount of bail; undertaking of returned to clerk, 3393-4
On arrest for felony or for offence when not bailed brought before justice, 3395
Examination; continuance of when on bail, 3396

Forfeiture of undertaking to appear; certified to court, 3397
Other magistrate may attend examination, 3398
Other warrant on failure to appear, 3399
Examination without delay; defendant's witnesses heard, 3400–1
Conducted so as to elicit the facts; counsel for defendant, 3402–3
Evidence reduced to writing; when discharged, 3404–5
When bailed or committed, 3406
Form of commitment; amount of required bail indorsed, 3407–8
Witnesses recognized to appear at court, 3409–10
Form of undertaking of prisoner's witnesses; security when, 3411–12
Proceedings when witnesses are minors or married women, 3413
Committed in default of undertaking, 3414
Discharged by sheriff on entering into; returned to court, 3415–16
Magistrate may associate others with him, 3417
Proceedings to keep the peace.
All judges and magistrates may require security to keep the peace, 3339
Duty of magistrate on complaint of danger of breach of peace, 3340
Warrant of arrest; when issued; by whom executed, 3341–2
Defendant heard in defence; may be discharged if no danger, 3343–4
Costs by complainant on frivolous complaint; execution for, 3345
When required to give security, when to appear at court, 3346
Form of undertaking to keep the peace, 3347
Discharged on giving it; committed in default of, 3348
How discharged by sheriff after commitment; costs, 3349–50
Prisoner on giving bond entitled to appeal, 3351
Form of undertaking on appeal, 3352
Such undertaking returned to circuit clerk, 3353
Proceedings on such appeals, 3354
Judgment on failure to sustain appeal, 3355
On threat in presence of a magistrate security required without process, 3356
Circuit court may require security on conviction, 3357
What a forfeiture of undertaking; remission of, 3358–9

CRIMINAL CASES, PROSECUTION OF.

General provisions as to.
Fines and forfeitures go to the county; jury assess the fine, 3619–20
Court fixes term of imprisonment in county jail, 3621
Imprisonment in penitentiary not inflicted without express power, 3622
Imprisonment in penitentiary; how inflicted, 3623
Defendant allowed to confess judgment for fine and costs, 3624
Imprisonment in default of payment of fine and costs, 3625
Judgment in such cases; when allowed insolvent's oath, 3626–7
Payment of fine no bar to additional imprisonment, 3628
Imprisonment; when inflicted by the court, 3629
Prosecutor may confess judgment for costs, 3630
Execution for fines and costs; two convictions, 3631–2
Benefit of clergy abolished; second conviction of same offence, 3633–4
Conviction of convict from another state; how punished, 3635
Conviction and sentence disqualifies executors, trustees, &c., 3636
Imprisonment for life, civil death; may make will, 3637
Sentence of death; how, when and by whom executed, 3638–9
When executed; whose presence required, 3640–1
Counsel of convict, ministers, &c., also permitted to attend, 3642
Proceedings when convict is pregnant, 3643–4–5
When delivered to be executed, 3646
When execution has been delayed; warrant if at large, 3647–8
Special proceedings in criminal cases.
See "Habeas Corpus," "Coroner's Inquest," "Search Warrants," "Vagrants," "Bastardy," "Absconding Felons," "Fugitives from other States."

CROP.

Growing levied on, but not sold till mature, 2461
On rented land exempt from execution till rent paid, 2460

CROSS BILL.

Interrogatories in answer by way of, 2916

CRUELTY.

By the husband ground of divorce, 1963

DAMAGES.

See "Bills of Exchange and Promissory Notes."
On affirmance of judgment on appeal, see "Appeals."
If less than twenty dollars in suits for torts, no more costs than damages recovered, 2376

DAMS.

See "Water-works and Dams."

DAGUERRISTS.

Tax on license of, 397

DAYS OF GRACE.

See "Bills of Exchange," &c.

DEATH.

See "Vacating of Offices."
Notice of death of member of congress given governor, 162
Notice of death of other officer to appointing power, &c., 162
Circuit clerks give notice of death of judge of probate, 163

DEBTOR.
See "Insolvent Debtors," "Prison Bounds."
DECISIONS.
Of supreme court, see "Reports."
DECLARATION.
See "Pleadings in Actions at Law."
Complaint substituted for, see "Complaint."
Of trust, see "Trust Estates."
DECREES IN CHANCERY.
See "Chancery, Decrees in."
Pro confesso, see "Chancery," "Redemption of Real Estate."
DEEDS.
See "Conveyances."
DEFAMATION.
See "Slander."
DEFAULTERS, PUBLIC.
Comptroller to prosecute. 365
Warrants not to be drawn for by comptroller, 367
DEFAULTING WITNESSES.
See "Witnesses."
DEFAULTING JURORS.
See "Jurors."
DEFAULTERS IN ROAD DUTY.
See "Roads," &c.
DEFAULTERS IN PATROL DUTY.
See "Patrols."
DELINQUENT TAXES.
See "Tax Collector."
DELIVERY BONDS.
See "Attachments," "Trial of Right of Property," "Detinue."
DEMURRERS.
In Chancery, see "Chancery, Bill, Demurrer," &c.
To evidence, see "Evidence."
Grounds of set down, and none others considered, 2253
Amendments after judgment on, without delay, 2254-5
Costs imposed for frivolous demurrer, 2256
DENTISTS.
See "Physicians."
Tax on incomes of dentists, 391
Tax on license of, 397
DEPOSITIONS IN CHANCERY SUITS.
See "Interrogatories to Parties," "Chancery," "Evidence."
Evidence in chancery taken by, under rules of court, 2920
When taken in suits in chancery, 2921
Commissions to take, how issued and when returnable, 2923-4
Attendance of witness before commissioner compelled, 2930-1
In cases at common law.
Cases in which they may be taken as evidence, 2318
Commission issues on affidavit and notice, 2319
Interrogatories filed and notice given by the clerk, 2320
If party absent from county, and no counsel resident, notice by filing interrogatories ten days, 2321
Penalty for not appearing before commissioner, 2324
Duty of commissioner in executing the commission, 2322
Certificate of commissioner evidence of identity, 2323
Commissioner subpœnas witnesses, default proved by return, 2325
Evidence thus taken and returned may be used on trial, 2326
When ground for taking ceases; to be suppressed, 2327
Objections to the whole deposition made before trial, 2328
Fees of witnesses before commissioner taxed as costs, 2329
DESCENTS AND DISTRIBUTIONS.
See "Distributions."
Law of descent of real estate, 1572
Lineal descendants taken per "stirpes," 1573
No representation among collaterals, except with descendants of brothers and sisters, 1574
Kindred computed by rules of the civil law," 1575
No distinction between whole and half blood; exception, 1576
Posthumous children inherit with the others, 1577
Bastards inherit from the mother, and the mother from them, 1578-9
If the heir an alien, next of kin inherits if a citizen, 1580
Personal property distributed as real property, portion of widow excepted, 1581
Advancements deducted from child's share, 1582
If advancement more than the share, he takes nothing, 1583
Considered a part of the estate in which made, 1584
Value of, how fixed; descendant takes parent's share subject to, 1585-6
Advancement defined; heirs take as tenants in common, 1587-8
DETAINER.
See "Forcible Entry and Unlawful Detainer."
DETINUE, (*or proceedings to recover personal property in specie.*)
Barred by limitation of six years, 2477
Mode of obtaining possession pending suit, 2192
On defendant's refusal to give bond, property delivered to plaintiff, 2193
Verdict in to assess separate value of each article, judgment for the property or value, 2194
Execution issues on the bond, on failure to deliver the property, 2195
Sheriff to return the bonds in such suits in ten days; penalty, 2196
Attachment or distringas to compel delivery, 2197
Bond for hire of slaves required on appeal oy defendant, 3025
DEVISE.
See "Wills."

DISCONTINUANCE.
May be entered as to parties not served, and cause proceeds, 2149
DISEASES, CONTAGIOUS.
See "Hospitals," "Physicians," "Poor," "Quarantine."
DISSECTION.
Stealing human bodies for, how punished, 3236–7
Buying it knowing it to have been stolen, 3238–9
DISTRIBUTIONS OF ESTATES.
See "Descents and Distributions," "Executors and Administrators," "Estates of Deceased Persons," "Legacies."
On report of solvency, order of distribution before final settlement, at the peril of the representative, 1771
Order for, made on application after eighteen months, 1778
Contents of application for, to be verified by oath, 1779
Citation to representative: order, when to be made, 1780–1
Refunding bond required; costs; refunding bond recorded, 1782–3–4
Is a security for representative and creditors, 1785–6
Value of property delivered recoverable on such bonds, 1787
Party making payment entitled to contribution, 1788
Order of distribution after eighteen months protects representative, 1789
Order of distribution, how and by whom executed, 1792
Distribution made and returned in writing, 1793
Commissioners to report if sale necessary to division, 1794
Objections to report; confirmation of and order of sale, 1795–6
Sale, how advertised and made, 1797
On confirmation of report, property distributed, 1798
Judgments and notes sold or divided as other property, 1799–1800
Estates of foreigners distributed here, or returned to the domestic administrator, 1827
If all debts are paid in eighteen months order of distribution issues, 1832
Distribution, when confirmed, enforced by decree, 1822
Sale of lands for distribution.
To be sold if not susceptible of fair division, 1867
Application for order of sale; its contents; by whom made, 1868
Parties in interest cited; husbands of married women, 1869–70
Publication as to non-residents, 1871
Proof of facts made and recorded; sale then ordered, how made, 1872
Dower of widow also sold with her consent, 1873
Value of, how fixed and paid; limited to a sixth, 1874–5
DISQUALIFICATION.
Of electors, see "Elections."
Of judges, see "Courts."
DISTRICTS.
See "Congressional Districts," "Senatorial Districts," "Chancery Districts."
DISTRINGAS, WRIT OF.
Issued to compel delivery of property recovered in detinue, 2197
DIVISIONS.
Chancery divisions, 596–7
DIVISION OF REAL ESTATE.
See "Distribution, sale for," "Partition."
DIVORCE AND ALIMONY.
Divorces granted by chancery courts "a vinculo," to either party, for impotence at time of marriage, for adultery, for abandonment for three years, for imprisonment in penitentiary, 1961
To the husband, if wife pregnant at time of marriage without his knowledge, 1962
To the wife for cruelty of husband, 1963
Suits conducted as other suits, see "Chancery," 1964
Answers not sworn to, only pleadings though sworn to, 1965
Misconduct of both parties prevents divorce, 1966
Complainant to reside here three years before bill for abandonment, 1967
Bill filed in defendant's county, if not a non-resident, 1968
If defendant a non-resident, complainant to have resided in the state one year, 1969
Allowance made the wife pending the suit, 1970
Allowance made her on divorce, if her separate estate is not sufficient, 1971
Allowance governed by the conduct of the parties, 1972–3
Divorce for adultery bars wife's dower, 1974
Divorce for pregnancy bastardizes issue, 1975
Deprives husband of control of wife's separate estate, 1976
On grant of divorce court disposes of the children, 1977
Transcript of record of divorce sent speaker of the house, 1978
Divorces from bed and board, for what causes granted, 1979
Final without action of legislature, custody of children, allowance, &c., 1980
DOCTORS.
See "Physicians."
DOCKETS.
See "Sheriffs," "Clerks," "Actions at Law."
DOGS.
Slaves not to own; penalty, 1014
DOWER.
See "Married Women, Separate Estate of."
Courts of probate allot in certain cases, 670
Defined, of what lands granted, quantity of the interest, 1354–5
Relinquished by joining in conveyance, attested by witnesses or acknowledged, 1356

Relinquishment if wife out of the state, 1357
Wives who are minors may relinquish dower, 1358
Assignment of dower.
Dwelling house retained by widow till assignment of, 1359
Assigned by metes and bounds on petition to judge of probate, 1360
Contents of the petition; notice to parties, and day for hearing set, 1361–2
Guardians appointed for minors interested, 1363
Parties, how cited; publication as to non-residents, 1364
Proceedings to allot dower after decree for widow, 1365
Commissioners sworn; allotment returned for examination, 1366
Dwelling house embraced if practicable, 1367
Judge of probate has no jurisdiction, if the land lying in different counties has been aliened, 1368
If lands aliened and improved, assigned only in chancery, 1369
Widow dowable of value at time of alienation, 1370
If judge of probate incompetent, petition to circuit court, 1371
Suits for, barred after three years, 1372
Divorce for adultery bars dower, 1373

DRUGGISTS, DRUGS.

See "Physicians."

DWELLING HOUSE.

See "Dower," "Burg'ary."

DUELLING.

See "Challenges to Fight."
Killing in duel murder in second degree, 3088

EDUCATION.

See "University of Alabama," "Township Schools," "School lands and School funds."
Incorporation of societies for purposes of.
Trustees to be elected by the members, 1257
Society, how incorporated; certificate of trustees recorded, 1260–1
Powers of such corporations; suits against, how begun, 1262–3
Fee of judge of probate for recording certificate, &c., 1264

EJECTMENT.

See "Real Actions."
Fictitious parties dispensed with; other rules of retained, 2209

ELECTIONS AND ELECTION PRECINCTS; SPECIAL ELECTIONS; CONTEST OF ELECTIONS AND APPEALS; PENALTIES FOR VIOLATING LAWS OF.

Elections by general assembly.
How conducted, 33
Elections by the people.
Penalty for betting on, 363
For calling out the military, 364
What officers elected by the people, 173
For governor, members of congress, of the house of representatives, and tax collectors, held biennially, 174
For clerks of circuit court, sheriffs, and senators in the general assembly, when held, 175
Presidential elections, when held, 176
Of circuit judges and judges of probate, when, 177
Of county commissioners, when held, 178
Of justices and constables, when held, 179
Special elections, for what officers, and when held, 180–1
Election precincts.
Counties laid off into, by court of county commissioners, 182
Place of voting in fixed, and numbered and recorded, 183–4
How and when changed; changes to be recorded, 185–6
Notice of the establishment and change of, 187
Notice to specify the boundaries, 188
Fine for failures to record or give notice of their establishment, 189
On failure to lay off, special court held, &c., 190
Special elections for other officers than justices and constables.
To be ordered by governor, and writs to be issued, 191
To make proclamation of such election to congress, 192
Sheriff to advertize time and place of holding, 193
Sheriffs to appoint inspectors, 194
Conducted as other elections, 195
General elections; appointment, &c., of returning officers, inspectors, and clerks, notice of election and oath of returning officers.
Inspectors of each precinct appointed by judge of probate, 196
Sheriffs returning officers of their counties; give notice of elections, 197
Appoint inspectors on failure of judge of probate, 197
Attendance on election of inspectors and returning officers, 198
Provisions on failure of inspectors to attend, 199
Provisions on failure of returning officers, 200
Clerks of election apppointed by inspectors, 201
Oath of inspectors and clerks, 202
Sheriff's neglect of duty a misdemeanor; fine, 203
Of opening and closing the polls, voting, and challenges,
Polls opened at 9, and closed at 5 P. M. 204
Proclamation on opening polls, 205
Voting by ballot; description of ballot used, 206–7
Ballot offered received, if no objection, 208
Name of voter placed on poll list and numbered, 209
Ballot numbered to correspond, 210
Separate ballot boxes for certain officers, 211
Challenge of voter; voter, when sworn, 212–13
Then examined as to qualifications, 214

Record of conviction and evidence of identity only received, 215
Naturalization proved by affidavit of voter, 216
On refusal to swear or answer, vote rejected, 217
Rejected ballots, marked and preserved, 218
Inspectors to maintain order, 219
May imprison rioters, &c., 220
Of counting out and estimating the vote, preserving ballots and poll lists, and making returns to returning officer of the county.
Counting out the votes, when and how done, 221-2
Inspectors to make and certify statement of votes for returning officer, 223
Ballots and poll lists, how disposed of, 224
Statement and poll lists returned to county returning officers, 225
Estimate of vote by county returning officer, 226
Sheriff gives casting vote for offices filled by one county, 227
Statement of election signed and delivered to judge of probate, 228
Contents of such statement; to be recorded, 228
Person having highest vote declared elected, 229
Returns and poll lists of precincts then delivered to judge of probate, and kept three months, 230
Returns, &c., not vitiated by want of form, 231
Certificates of election; returns of returning officers of counties in certain cases in relation to certain offices, and proceedings thereon; casting votes in certain elections; returns of returning officers in congressional and senatorial districts, and allowances to returning officers in certain cases.
Certificate of election given by returning officer of county, 232
Returns mailed to secretary of state, if officer to be commissioned, 233
Commission to such officer, issues on certificate, 234
Returns of governor's election, to speaker of the house, 235
Returns of election of members of assembly to secretary of state, 236
Sheriff of county electing a senator is the returning officer, 237
Return of senatorial elections, how, and by whom, and to whom made, 238
Returns of elections to congress, to district returning officer, 239
Estimate of vote in congressional and senatorial elections, 240
Notice of failure to make returns to be given, 241
Returning officer of district, gives casting vote, 242
Certificate of election given by returning officer, 243
Returning officer of congressional district to mail returns to secretary of state; also of senator, 244-5
Pay of county returning officers, 246
Returns of election for circuit judge, 247
Estimate of vote by secretary of state, 248
Casting vote for circuit judge, how given, 249
Returns to be in writing, and signed; their contents, 250
Returns, how made, 251
Not bad for want of form, 252
Elections, general and special, of justices and constables.
When held; elected by electors of precinct, 253-4
Notice of election; inspectors and returning officers, 255-6
Proceedings if inspectors or returning officers absent, 257-8
Officers sworn and elections conducted as other elections, 259-60
Returns and casting vote; list of justices elected returned to secretary of state, 261-2
Justices to be commissioned, 263
Special elections of; when held, notice and returns, 264-5
Elected for unexpired term, 266
Penalty for voting twice, or without qualification, 267-8
Penalty for failure of sheriff to order election, 269
Notice of vacancy in office of justice or constable, 270-1
Elections in new counties.
Vote with original county till apportionment, 348
Electors can only vote at precincts of their old county, 249
Returns of such election, 350
Of contesting elections; what elections may be contested, and by whom; on what grounds; general provisions.
Election of circuit judges, senators, or of any office filled by a single county, or of justice or constable, contested by any qualified elector, 273
Causes of contesting; election not annulled, unless caused dy fraud, &c., 274-5
Nor for illegal votes, unless they change the result, 276
Notice of illegal votes given, and legal votes rejected given before trial, 277
Return of officer proves notice, 278
Statement of grounds of contest on oath, 279
What statement sufficient, 280
Copies of poll lists and returns furnished the parties, 281
Are evidence of the facts stated on the trial, 282
Contestant to give security for costs, 283
Returns of poll lists and ballots kept for the court, 284
Voters may be examined, but not prosecuted, afterwards, 285
Of members of the general assembly.
Security for costs given, and notice of contest, and affidavit of grounds, 286-7
To be done in twenty days; evidence of service of notice, 288-9

Neglect of duty in serving; penalty, 290
Testimony, when taken; by deposition, when, 291–2
When by interrogatories, 293
Witnesses failing to attend, reported by commissioner, 294
Fees of witness and commissioner; commission, how executed, and to whom returned, 295–6
Costs, how taxed; execution for costs, 297
Against contestant, execution against his sureties, 298
Clerk's fee for issuing execution, 299
Contest of election of offices filled by single county, except members of the assembly and judges of probate, and of election of justices and constables.
Proceeding to contest such elections before judges of probate, 300
Security for costs then given, 301
Notice to adverse party, and witnesses summoned, 302–3
Defaulting witness; depositions, 304–5
Pay of witnesses and commissioners, 306
Judge of probate may examine the ballots, and tries the case by ordinary rules of evidence, and gives judgment, 307
Successful party entitled to commission, 308
Proceedings in case of a tie vote, 309
If party elected ineligible, election void, 310
Costs in such contests, 311–12
Death of officer abates proceedings, 313
On death of contestant other party may take his place, 314
Death of contestant abates contest, if no other party is made, 315
Trial by jury, when awarded, 316
If judge of probate incompetent, circuit judge tries the case, 317
Papers then filed in circuit court, 318
Tried at first term, 319
Tried by him as before circuit judge, 320
Contest of elections of judges of probate.
Security for costs given clerk of circuit court, and statement of grounds of contest filed and sworn to, 321
Notice of contest and security for costs, when given, 322
Testimony, when taken; defaulting witnesses, 323–4
Tried as contests under preceding article, 325
Contest of election of circuit judge.
Statement of grounds of contest presented chancellor, 326
Security for costs in ten days, 327
Notice served on adverse party in twenty days, 328
Testimony; authority of the chancellor, 329–30
He may empannel a jury, 331
Continuance; if chancellor fail to attend, 331–2
Tried as other contested elections, 333
Appeals and fees to officers.
Appeals lie from probate to circuit court, 334
And from circuit to supreme court, 335
Security for costs of appeal; on affirmance, execution for costs, 336
On affirmance, execution against sureties for costs, 337
Fees of officers in appeal cases, 338
Elections on amendments to the constitution.
See "Amendments," §§ 351–2–3–4.
Elections; penalties for violating laws relating to.
For voting without qualification, or more than once, 355–6
For failure to make returns to secretary of state or speaker of the house, 357
Notice of such failure given to solicitor, 358
Fines for other neglect of duty by officers of, 359
For corrupt influence of elector, 360
Fraudulent substitution of ballot, 361
Fine and imprisonment for meddling with ballots, &c., 362
For betting on elections, by officers of, 363
Calling out military on election day, 364

ELECTORS.

See "Elections."
Qualifications of; disqualifications, 170–1
Conviction of penitentiary offence, except manslaughter, disqualifies, 171
Being soldier, sailor or marine of United States, 171
Residence of elector defined, 172
Penalty for corrupt influence of, 360
Fraudulent change of his ballot; penalty, 361
Of president and vice president.
Elected by the people; when elected, 173–176
Elected by general ticket; number elected, 339
Returns of election of made to secretary of state, 340
Vote estimated by governor and result proclaimed, 341
Casting vote given by the governor, 342
Pay of county returning officer; fine for neglect, 343–4
Meeting of electors; vacancies, how supplied, 345
Vote for president and vice president by ballot, 346
Pay of electors, when and how made, 347

EMANCIPATION.

See "Master and Slave."

EMBEZZLEMENT.

By officer of corporation or by clerk of employer's property; larceny, 3143
By common carriers; private bankers, factors, attorneys, &c., 3144–5–6
Of property or money in bank; larceny, 3147
By treasurer of the state or his clerk; indictment for, how drawn, 3148–9
Receiving or buying embezzled property, 3150

ENCLOSURES AND TRESPASSING ANIMALS.

See "Fences."

ENGINEERS AND STEAMBOATS

See "Ships and Seamen," "Steamboats," "Port and Harbor of Mobile."
Board of, established at Mobile; incorporated, &c., 872–3

Appoints officers and may hold property, &c., election of directors, 874–5
Pay of officers; quorum of board; examination of and certificates, 876–7–8
Penalty for acting without certificate; for employing without, 879–80
Exception in case of sickness of; captain and owner liable for injuries by explosion, if engineer not certificated, 881–2
Representative sues if death result, manslaughter also, 883–4–3098
Certificate of, revoked for certain causes; penalty for acting after, 885
Board to prosecute offenders; fines and fees, how disposed of, 886–7
Two-thirds required to revoke certificate; fee on grant and renewal of, 888–9–90
Board to survey and examine steamboats, 891
Certificate given if river-worthy; boat and owner liable if no certificate, 892–3
Board of survey of damaged property in Mobile, 894
Fees of harbor master and port wardens, 895
Goods landed on the bank placed ten feet above the water, 896
Owners and boat liable for neglect to do so; damage to cotton bales by hooks, 897–8
Endangering life by overloading boat, 3097
Bursting of boilers from neglect or ignorance, 3098
Endangering life by bursting boiler in racing, 3100

ENTAILS.

Fee tail construed as fee simple, 1300

ENTRY ON LANDS.

Se "Limitation of Actions," "Forcible Entry and Detainer," "Real Actions."
Presumed when right accrued, 2482
Right of not tolled by descent cast, 2483

ENUMERATION OF INHABITANTS.

See "Census."

EQUITY, COURTS OF, PROCEEDINGS, IN.

See "Chancery."

EQUITABLE ATTACHMENTS.

See "Chancery."

ERRORS AND APPEALS.

See "Appeals."

ERROR, WRITS OF, IN CRIMINAL CASES.

See "Appeals," &c.
Apparent on the record, corrected within two years, 2406

ERRORS AND AMENDMENTS.

See "Amendments."

ESCAPE OF PRISONERS—OF CONVICTS.

See "Convicts.," see "Fugitives from justice from other states."
Felony in officer voluntarily permitting escapes of, 3210
Fine to permit escape of, through negligence, 3211
Officer refusing to receive in jail or custody, fined, 3212–13
Aiding escapes of from jail charged with felony; a felony, 3214
Aiding escape of, charged with other offences, 3215
Aiding escape of from officers; how punished, 3216
Prisoners escaping may be retaken, 3217

ESCHEATS.

When property escheats to the state, 2064
Notice to be published if heirs do not appear for six months, 2065
Contents of notice; personal estate paid to judge, if none appear in twelve months, 2066–7
If none appear for two years, real estate also sold and proceeds paid over, 2068
Accrues against the representative in favor of the state, 2069
Judge of probate to pay over funds to state treasurer, 2070
Heirs allowed two years to claim against the state, 2071
Remedy for the state against representative for such property, 2072
Judge of probate's duty in relation to; his fees and commissions, 2073–4

ESTATES.

See "Real Estates," "Dower," "Conveyances," "Insolvent Estates," "Wills," "Executors and Administrators," "Partition," "Descents and Distribution," "Distribution."

ESTATES OF DECEASED PERSONS.

See "Descents and Dirtribution," "Wills," "Executors and Administrators," "Legacy," "Distribution," "Insolvent Estates," "Courts of Probate," "Appeals," "Escheats."

The presentation of claims against.

All claims against, barred in eighteen months if not presented, 1883
Not to apply to infants, lunatics or heirs, or legatees as such, 1884
Claims may be either presented or filed; docketed if filed, 1885
Suits prosecuted by revival against representative, 1886
Costs against plaintiff failing to prove presentation, 1887

Appeals.

To the supreme or circuit court, in what cases allowed, 1888
From circuit to supreme court, on contest of a will, 1889
Bills of exception tendered in such cases, 1890
Copy introduced in the record and appeal tried on it, 1891
If all the evidence is set out, supreme court may render judgment, 1892
Transcripts made in contest of will, 1893
Appeals from circuit to supreme court in thirty days, 1894
Bond and security required on appeal from order of removal, 1895
Execution on bond for cost, on affirmance, 1896
Bond also a security to the estate, 1897
Security for costs required on all appeals, 1898

Judge may allow costs of appeal against the estate, 1899

Miscellaneous provisions relating to.

Slaves retained on plantation till crop is made, 1900
Proceeds of crop assets; property when kept together, &c., 1901–2
Real estate to be cultivated; not done if forbid by the will, 1903–4
Annual settlements made in such cases; to show sum paid each heir, 1905–6
Filing accounts and notice of settlements; settlements, how compelled, 1907–8
Estates not kept together to prejudice of creditors or heirs of full age, 1909
Proceedings when judge of probate is incompetent, 1910
Papers removed to office of Register, 1911
Records and process in such cases, when both are incompetent, 1912–13
Proceedings against officer for not executing or returning process, 1914
Bill may be filed in chancery to correct settlements, within two years, 1915
Infants, married women, &c., allowed longer, 1916

ESTRAYS.

See "Stallions," &c., "Animals running at large," "Salvage."
Any person may take up; certain animals; not taken at certain seasons, 1062–3
Taken before justice and oath made; appraisement and return, 1064–5
Judge of probate to enter certificate in estray book, 1066
When two estrays taken at same time; bond required, 1067–8
Bond and appraisement returned to judge of probate, 1069
Horses, &c., appraised above twenty dollars, advertising fee paid, 1070
Penalty for neglect of duty by justice, 1071
Horses, &c., when advertised in newspaper, 1072–3
Contents of advertisement, 1074
List of estrays posted at court house, before circuit court, 1075
Those advertised to be brought to the court house at court, 1076
Death or escape of without fault, discharges taker up, 1077–8
Ownership of, how proved by claimant; order of delivery, 1079–80
Not used until bond is given; penalty; no charge if worked, 1081–2–3
Pay for keeping if not worked; penalty for injuring or disposing of, 1084–5–6
On failure to claim for a year forfeited to taker up, 1087
Half the value paid to county; execution on bond if not paid, 1088–9
Death of taker up; fees to officers, 1090–1

EVIDENCE.

See "Depositions," "Witnesses."

Of convicts.

See "Convicts."

General rules of evidence.

Negroes, mulattoes and Indians only competent for and against each other, 2276
Two witnesses required to prove claim against an Indian, 2277
Written contract proves consideration unless impeached by sworn plea. See "Bills of exchange," &c., 2278–9
No proof of assignment or of execution of paper offered as set-off, unless denied on oath, 2280
Proof of partnership of plaintiff not made unless denied on oath, 2281
Receipts, &c., without seal operate as releases, 2282
Compromises enforced without new consideration, 2283
Process regular on its face justifies officer, 2284
Rate of interest of other states; how proved, 2285
Security rendered competent by indemnity, 2286
Nominal plaintiff competent for defendant, 2287
Defendant against whom no proof offered is competent, 2288
One defendant competent for plaintiff against another, 2289
Assignor not competent except in certain cases, 2290
Mortgagor and defendant in execution not competent for claimant in trial of right of property, 2291
Certificate of register of land office evidence of title, 2292
Statutes of other states or United States proved by printed copy, 2293
Office papers authenticated by certificate of chief of bureau, 2294
Copies of official bonds and office papers kept by sworn officers are evidence, 2295
Private acts given in evidence without special plea, 2296
Patents of a state or the United States prove themselves, 2297
Physician's entry evidence of service, unless denied on oath; value of service to be proved, 2298
Prices current evidence of value at their date, 2299
Registers of births, deaths and marriages evidence, 2300
Testimony to be given on oath or affirmation in open court, 2301
Conviction of certain offences or interest in judgment disqualifies witness, 2302

Subpœna, proving testimony by.

Subpœnas issue when cause on trial docket, 2303
Witness not subpœnaed living one hundred miles from court, 2304
Executed in term time by personal service, at other times by a copy left at his residence, 2305
Issued by clerk from term to term, 2306
Penalty of defaulting witness, 2307
Proceedings to recover the forfeiture, 2308

Witness imprisoned for refusal to testify, 2309
Not discharged without bond to appear and testify, 2310
Witness exempt from arrest under civil process, 2311
Excuse of defaulting witness; when and how made, 2312
Plaintiff may prove a claim of three hundred dollars by his own oath unless defendant denies it on oath, 2313
Notice to be given; not so proved against executors, &c., 2314–15
Usury proved by defendant's oath; notice to be given, 2316
Representative may make such a defence, 2317
Deposition, procuring testimony by.
Cases stated in which depositions can be taken, 2318
Commission to take issues on affidavit and notice, 2319
Interrogatories filed and notice given by the clerk, 2320
Interrogatories filed in office if party absent and no attorney, 2321
Duty of commissioner in executing commission, 2322
Commissioner's certificate evidence of identity, 2323
Penalty for failure to appear before commissioner, 2324
Subpœnas issued by commissioner; default shown by his certificate, 2325
Evidence thus taken and returned presumed regular, 2326
If cause does not exist at trial, deposition suppressed, 2327
Objections to the whole, deposition taken before trial, 2328
Fees of attendance, &c., taxed in the bill of costs, 2329
Examination of parties by interrogatories.
On affidavit of materiality filed to adverse party, 2330
Commissioner to take his answer if a non-resident, 2331
Answer on oath is evidence, 2332
Impertinent questions evaded, or answer to suppressed, 2333
Proceedings if answer evasive or not full, 2334
Answer may be contradicted, 2335
All pertinent questions not involving prosecution to be answered, 2336
Perpetuation of testimony.
In what cases allowed to be perpetuated, 2337
Affidavit specifying grounds to be filed, 2338
Order for examination of witnesses, and notice to adverse party, 2339
Notice to non-resident by publication; copy of affidavit, &c., 2340–1
Expenses of publication; examination of witnesses, &c., 2342–3–4
Sheriff's return proves the notice; effect of testimony so taken, 2345–6
Fees of officers, 2345
Demurrer to evidence.
When allowed; admits facts and inferences, but denies the legal effect, 2349–50
Testimony to be written out and becomes part of the record, 2351
Writ of inquiry if judgment for plaintiff, 2352

EXAMINATION.

See "Evidence," of prisoners charged with offences; see "Criminal prosecutions, commencement of."

EXCEPTIONS.

See "Appeals," "Bills of Exception," "Chancery, amendments and exceptions."

EXECUTIONS.

See "Forthcoming bonds," "Sheriffs," "Judgments, revival of,"

Executions of justices.
See "Justices;" see "Liens."
Executions and forms of executions.
Fi. fa., ca. sa., &c., 2422
Clerk to issue as soon after adjournment as practicable 2423–447
Time within which they must be issued, 2424
Bill of costs to be written on it, 2425
Issued before adjournment on affidavit, but new trial not waived thereby, 2426
On affidavit after the adjournment execution immediately, and ca. sa. if required, 2427
More than one may issue, 2428
When executed by coroner, 2429
Credits to be indorsed on alias execution, 2430
Execution v. plaintiff for his cost when defendant insolvent, 2431
Females exempt from ca. sa.; ca. sa. only issued on affidavit, 2432–3
Person discharged by privilege to surrender when it expires or be liable for an escape, 2434
Property may be delivered in discharge of person; levy, sale and return, 2435
Date of receiving execution to be indorsed, and order of receipt if more than one, 2436
He must execute and return it with diligence, 2437
Returned to next term of court unless issued less than fifteen days before court, 2438
Reason for not executing or fully executing to be stated in the return, 2439
Returns from other counties made by mail, but money not to be thus sent, 2440
Fi. fa. if less than one hundred dollars not to be levied on slaves if other property found, 2441
Sheriff to provide food, &c., for slaves or cattle levied on, 2442
Description of property levied on to be indorsed on the execution and notice given of levy on land, 2443
Indemnifying bond required in cases of doubt, 2444
If party having lien refuses to indemnify and others do, he loses his lien, 2445
Place and time of selling property levied on, 2446

Advertisement of sale; when and how given, 2447
Surety may demand that levy he made on principal's property; suretyship shown by affidavit, &c., 2448
Indorsement made of amount collected on; execution and receipt to party paying it, 2449
Defendant may substitute other property, 2450
Sheriff to give notice to plaintiff or attorney of collection, 2451
Excess of sales paid defendant, and money collected before notice of injunction refunded, 2452
Names of slaves and description of land sold to be indorsed with the price on execution, 2453
Writ for sale of goods remaining on hand issued; property subject to execution, 2454
Legal and equitable estates in lands, &c., subject to levy and sale, and all personal property, except choses in action, equities of redemption included, 2455

Lien of executions.

Executions lien on property within the county only from date of delivery, 2456
Order of liens of executions between different creditors, 2457
Lien destroyed by appeal or supersedeas bond, 2458
Liens existing at defendant's death may be perfected by execution, 2459

Property exempt from execution.

Property on rented land till a year's rent is tendered if due, 2460
Crop may be levied on, but not sold till mature, 2461
Property exempt for the use of every family, 2462
Value of the homestead fixed by three freeholders, 2463
Not to be sold by head of family, 2464
Affidavit made of claim or sheriff not liable, 2465
Property exempt to be returned on claim, 2466

Execution of sentence of death.

See "Pardons," &c.; see "Criminal prosecutions."
To be by hanging; executed by sheriff, &c., 3638–9
When executed; whose presence required, 3640–1–2
Proceedings if female convict pregnant, 3643–4
Execution suspended if found pregnant, 3645
Executed after delivery, 3646
Proceedings when execution has been delayed, 3647–8
If judgment affirmed on writ of error, execution directed, 3664–5
If day for execution passed another day fixed, 3666

EXECUTORS AND ADMINISTRATORS.

See "Courts of Probate," "Descent and Distribution," "Legacy," "Distribution," "Will," "Appointments," "Dower."

Grant of letters testamentary or of administration.

On the probate of will, letters testamentary granted, 1657
Persons disqualified from acting as executor, 1658
Administration granted, if those named disqualified, 1659
Consent of husband required to grant of letters to wife, 1660
On removal of a disability, an executor may act, 1661
Renunciation of right; failure to apply for letters is, 1662–3
Letters granted to those who do not renounce, 1664
If all renounce, administration granted, 1665
The executor of an executor has no claim to act, 1666
Jurisdiction of courts of probate in granting letters, 1667
Administration, to whom to be granted, 1668
Failure to apply for letters waives the right, 1669
Males preferred to females, and the whole to half blood, 1670
Kindred computed by civil law, and court may select between those equally entitled, 1671–2
Husband may administer in right of his wife, 1673
Renunciation of right to administer, 1674
Administration not granted till fifteen days after death, 1675
Special administrator; when appointed, his powers, 1676–7
He may sell perishable goods, 1678
Authority of, ceases on grant of letters in chief. 1679
General administrator of a county; his duties, 1680
Sheriff or coroner, when appointed, 1681
Grant to general administrator, sheriff or coroner not made for sixty days, 1682
Executors and administrators to give bond, approved by judge of probate, 1683–4
Testator may waive bond by will; exception, 1685
If required by judge, notice to executor who may resist it, 1686
Form of letters testamentary and of administration, 1687–8
General administrator to give bond, 1689
Administration of sheriff or coroner attaches to the office, 1690
Security required for expenses on application to commit estate to them, 1691
Judge of probate liable for not taking bond, or for taking insufficient bond, 1692
Letters of administration conclusive authority, 1693
Letters not to issue till time of appeal has passed, &c., 1694
Letters to be recorded and bonds and copies evidence, 1695

The removal of and requiring additional bonds of executors and administrators, and proceedings on discovery of a will.
Causes of removal of executors and administrators; additional bonds, when required, 1696–7
Application for removal of, or additional bond, by and to whom made, 1698
In writing, stating the grounds on oath, 1699
Citation to answer issues to executor or administrator, 1700
Notice by publication if absent, 1701
Expenses of publication; trial; when by jury, 1702–3–4
Cost of proceeding; order to give additional bond, 1705–6
On failure to give such bond, letters revoked, 1707
Judge may require additional bond, &c., without application, 1708–9
General administrator, how removed, 1710
Additional bond, how required of him, 1711
Proceedings when sheriff's or coroner's bond is insufficient, 1712
Executors' and administrators' bonds, how and by whom sued on, 1713
Bond irregularly taken, sued on as other bonds, 1714
Sureties, to what extent discharged, on giving additional bond, 1715
When additional bond filed, both are in force, 1716
Right of sureties to contribution, 1717
Resignation; liability after resignation, 1718–19
Administration granted on death, removal or resignation of representative, 1720
If one dies, resigns or is removed, others act, 1721
On production and probate of will, letters before granted revoked, 1722
Will annexed to administration if executor do not apply, 1723

Collecting property, inventory, appraisement and return.

Representative collects the property, papers, &c., and makes an inventory, 1724
Contents of the inventory; to be sworn to and returned, 1725–6
Appraisers appointed and appraisements made, 1727–8
Appraisement sworn to; inventory and appraisement, when returned, 1729–30
Supplemental inventory; appraisement under, 1731–2
New appraisers appointed when necessary, 1733
Representative to publish his appointment, 1734–5
Penalty for failure to publish appointment, 1736

Powers and duties of; the settlement and payment of debts and legacies; proceedings to enforce distribution and payment of, before final settlement.

All property charged with payment of debts, 1737
Certain property exempted in favor of widow and children, 1738–9
Live stock may be killed for family use, 1740
Order in which debts shall be paid, 1741
No preference among those of same class, 1742
Sale of personal property made by order of court, 1743
Application for the order and notice; may be contested, 1744–5
Advertisement, hours and terms of sale of, 1746–7–8
Slaves sold only at the court house; crop at private sale, 1749–50
Lands rented at public auction, slaves hired publicly or privately, 1751
Notes with two securities taken for credit payments, 1752
Accounts of sales returned on oath in sixty days, 1753
Sale of lands when there is a will, 1754
When sold if there is no will, 1755
Application for order of sale; day fixed for hearing; notice, 1756–7
Proof required of administrator; contest of application, 1758–9
Order of sale, when to be made; when refused; costs, 1760–1
Advertisement of sale, how and when made, 1762
Security for purchase money required, 1763

Sale of lands by, distribution, &c.

Terms of sale, made at the court house, 1763–4
Returns of sale, when made; to be examined, 1765
When to be set aside; set aside for insufficient security, 1766–7
Re-sale then ordered; order of confirmation if approved, 1768–9
Conveyance not made till purchase money is paid, 1770
Report of solvency and order of distribution at their own peril, 1771
Payment of legacies compelled after eighteen months, 1772
Application for order of payment; citation to answer it, 1773–4
Hearing of case; order of payment on giving refunding bond, 1775
To whom payable, its amount and condition, 1776
Value of legacy entered of record; execution on the bond, 1777
Order of distribution after eighteen months, 1778
Application for to state applicant's share and solvency of estate, verified by oath, 1779
Representative cited to answer, 1780
Order of distribution, when made; refunding bond, 1781–2
Costs on such applications; refunding bond recorded, 1783–4
It is a security for creditors and representative, 1785–6
Value of property distributed only recoverable on such bond, 1787

Party making a payment on has contribution from others, 1788
Order of distribution after eighteen months, protects representative, 1789
Payment of debts after eighteen months protects representative against debts not presented, 1790
Interest deducted from debts not yet due, 1791
Order of distribution, how and by whom executed, 1792
Distribution made and returned in writing, 1793
Report of commissioners, if sale necessary to a division, 1794
Objections to the report; confirmation of distribution and order of sale, 1795–6
Sale, how advertised and made, 1797
On confirmation of distribution, the property delivered, 1798
Judgments and notes sold or divided as other property, 1799
Representative assigns them to the party entitled, 1800
Accounts and settlements of.
Settlements made annually or oftener if required, 1801
Manner of making settlement; accounts and vouchers and list of the heirs and their residence filed; all on oath, 1802
Court to appoint guardians for infants, lunatics, &c., 1803
Damages for failure to file statement of heirs, &c., 1804
Advertisement of day of settlement, 1805
Contents of notice; on waiving of, publication by posting, 1806–7
Court then examines and audits the account, 1808
Proof of credits required; made by affidavit or other evidence, 1809–10
Items less than twenty dollars proved by his own oath 1811
The account may be contested; how, 1812
Representative liable for interest; discharged on oath that he has not used the money, 1813
Costs of contest of accounts; items withdrawn, 1814–15
Account stated, when audited, passed and recorded, 1816
Attachment to compel settlement after citation on account stated, 1817
After so stating the account, citation issues to appear and file an account, 1818
On failure to appear, &c., account passed as stated, 1819
Such decree set aside on filing account and vouchers before final settlement, 1820
If all debts are paid, final settlement made in eighteen months, 1821
Order of distribution, and when confirmed enforced by decree, 1822
Previous accounts may be examined, but presumed correct, 1823
Representative then charged with other items, on proof, 1824
Compensation of representative, 1825
Personal estate of foreigners disposed of as by will or by laws of decedent's domicil, 1826
Estates distributed here, or delivered foreign administrator, 1827
Accounts and settlement by, how compelled after cessation of their authority.
On resignation or removal, settlement to be made in a month, 1876
Decree for the balance found due, 1877
Attachment to compel a settlement, 1878
Or account stated in his absence and notice published, 1879–80
Proceedings on final settlement of such account, 1881
Decree against him on the stated account, 1882
Such decree no bar to another suit, 1882
General provisions as to rights and liabilities of.
Not sued for six months; to be sued in county of grant of letters, 1917–18
Only liable for amounts received and for neglect, 1919
Resignation no bar to suit, without final settlement, 1920
Mode of enforcing judgments and decrees of probate court against, 1921–2
On return of "no property," execution against personally, 1923
Suits by special administrator prosecuted by, 1924
Actions against prosecuted against successors, on motion, 1925
Executions on judgments of predecessor without scire facias, 1926
Death of one representative does not abate suit against, 1927
Administrators of those liable to an estate, also liable, 1928
Damages to real property survive to representative, 1929
Judgments against decedent only revived by suit; exception, 1930
Legatee after eighteen months may sue for legacy at law, 1931
Inventory may be explained by proof; character of proof allowed, 1932
Executor de son tort, liable only to representative, 1933
Foreign administrator; action, how maintained by or property recovered, 1934
To prove compliance with such requirements, 1935
Amount of bond; delivery of property or payment to is a discharge, 1936–7
Wrongful act causing death, sued for by representative, 1938
Amount of damages limited; to whose use recovered, 1939
Conviction or acquittal no bar, 1940
Corporation liable for its agent's negligence causing death, 1941
Promises by to pay debts of deceased, void unless in writing, 1551
After citation to representative of defendant, judgment by default, 2148

EXTORTION.

See "Fees."

Defined; punishment of, 3225

FACTORS.

Taxes on commissions of, 391
Punishment for appropriating principal's cotton, &c., 3266
For permitting fraudulent sampling of cotton, 3265

FACTS.

See "Charges to Juries."

FAMILIES.

Certain property exempt from execution in favor of. See "Executions."
See "Slaves;" see "Husband and Wife."

FEES IN CIVIL CASES.

See "Costs."

General rule as to fees.

Clerks and sheriffs to keep a fee book and enter all fees charged; clerk's fee book is an office book, 3051
Fee book to be indexed, 3052
No fee to be charged not entered in the book, 3053
Fees not due until bill of items is presented, 3054
Full commissions not paid unless the money has been made by the officer, 3055
On stay of execution after levy, half commissions received, 3056
No fees to be demanded, except for final record, till service has been performed, 3057
Clerk to make out bill of fees on request, and no charge to be made for taxing costs, 3058
Four times the amount recovered for extortion, 3059
Execution against plaintiff for his costs on return of no property against defendant; penalty for failing to pay over costs, 3060
A copy of the bill of costs to be indorsed on each execution, 3061
Commissions not to be charged on costs, 3062
No fee shall be taken unless expressly allowed by law, 3063
Fee bill of officers to be posted in their offices, 3064
No fees lawful charged during the time of such failure, 3065
Judge of probate forfeits fifty dollars for each extra charge, and indictable also for extortion, 3066
Book of fees received to be kept open for inspection, 3067
Solicitor and grand jury must present offenders, 3068

Fees of certain officers in civil cases.

Of clerk of circuit court, 3043
Register in chancery, 3044
Clerk of supreme court, 3045
Judge of probate, 3046
Sheriffs, 3047
Attorneys' and solicitors' tax fee, 3048
Justices of the peace, 3049
Constables, 3050

FEES IN CRIMINAL CASES.

Fees of certain officers in such cases.

Justices' fees, 3985
In indictable cases certified to circuit court, 3986
In petty offences execution issues against defendant, 3987
Constables' fees, 3988
In indictable cases certified to circuit court, 3989
Clerk of circuit court fees, 3990
Taxed as cost and paid by the defendant on conviction, 3991
Sheriffs' fees, 3992
Taxed against defendant on conviction, 3993
Coroners' fees, 3994
Certified to circuit court; how paid, 3995
Solicitors' fees, 3996
Attorney general's tax fee in supreme court, 3997

General provisions as to such fees.

If the duty be performed by another, he entitled to the fee, 3998
Not to apply to judges or chancellors, 3999
No fee to be charged not expressly authorized by law, 4000
No compensation for custody if prisoner escapes, 4001–2
Sheriffs' and jailors' accounts examined and proved in open court, 4003
Accounts so certified passed by comptroller, 4004
Fee books and bills of costs to be kept by officers, 4005

FEE SIMPLE.

Conveyances of lands construed as passing unless restricted, 1299
Fees tail converted into, 1300

FELONY.

See "Offences," "Criminal Prosecutions."
An offence punishable by death or penitentiary, 3071

FEMES COVERT.

See "Husband and Wife," "Dower," "Conveyances," "Married Women."

FENCES.

Lawful enclosure defined; owner not liable for trespass by cattle except in such, 1099–1100
Damages for injury to cattle if fence not a lawful one, 1101
Penalty for setting stakes, except in lawful fence, 1101
Damages for trespass of cattle over lawful fence, 1102
Proceedings to recover damages, 1103–4
Partition fence between improved lands at joint expense, 1105
If put up by one, value of, how assessed, 1106–7–8

FERRIES.

See "Bridges, Causeways and Ferries."
Taxation of, 391

FI. FA.

See "Executions."

FINANCES OF THE STATE.
See "Comptroller," "Treasurer," "Taxation."
FINES.
See "Forfeitures;" see "Clerk Circuit Court;" see "Criminal Prosecutions, General Provisions," "Contempts."
Fines and forfeitures in state cases to go to the county, 3619
Assessed by jury, 3620
Judgment may be confessed for, with security, 3624
Additional imprisonment for failure to pay fine and costs, 3625–6
Discharge from under insolvent debtor's oath, 3627
Payment of fine no bar to additional imprisonment, 3628
Imprisonment in certain cases only in default of payment of, 3629
Sheriff returns statement of receipt of for county, 782
Penalty for failure to do so, 782
Governor may remit fine, 3699
FIRE HUNTING.
Penalty for; double damages for cattle killed in, 1113–14
Penalty for by slave, 1017
FISCAL YEAR.
Ends on thirtieth September; statement of expenditures of, published, 371–2
FISH.
See "Inspection Laws."
FLORIDA.
Boundary between this state and, 17
FLOUR.
See "Inspection laws."
FOLLOWING.
Defined as used in the Code, 5
FORCIBLE ENTRY AND UNLAWFUL DETAINER.
Justice has cognizance of; defined, 2850–51–2
Terms for years and all other estates in land included, 2853
Justice to issue notice to defendant on complaint made, 2854
Notice, how served; issue made up, and if defendant absent, not guilty entered, 2855–6
Writ of restitution executed by sheriff, and judgment for costs, if plaintiff succeeds; against plaintiff, for costs, if cast, 2857–8
Estate or title not in issue; possession of three years bars recovery, 2859–60
Testimony, by witnesses and depositions, 2861
Two hundred dollars penalty for failure to execute process in such cases, 2862
Proceedings under this article no bar to other suits, 2863
Appeal allowed on giving bond, and case tried anew, 2864
Writ of restitution not superseded without security for rent, 2865
Papers returned to court as in other appeals, 2866
Writ of restitution and judgment for rent on affirmance, 2867
Tried before a justice of the precinct or mayor of a city, 2868
Defaulting witness may be fined one hundred dollars, 2869
Judgment for the fine not absolute till after notice, 2870
Fees of sheriff, constable, and witnesses, 2871
FORDS.
May be crossed at a ferry, &c., without toll, 1202
FOREIGN ADMINISTRATOR.
Balance, after payment of debts of foreigner, may be paid to, 1827
When allowed to receive property or collect debts due deceased, 1934
Must show compliance with the law, 1935
Amount of bond, how determined, 1936
Delivery of property, or payment of debt to, a discharge, 1937
FOREIGN STOCK.
Taxes on, held in this state, 391
FOREIGN BILLS OF EXCHANGE.
See "Bills of Exchange."
FOREIGN CORPORATIONS.
See "Taxation of Corporations;" "Banks and Banking."
Taxes on premiums of, 391
Attachments may issue against, 2513
FORFEITURES.
See "Fines," "Jurors," "Witnesses," "Bail."
Of undertakings to keep the peace, 3358–9
Of undertakings to appear at adjourned examination, 3397
When forfeiture absolute at first term, 3690
Conditional judgment against defaulting witness or defendant, 3691
Notice of the judgment; when executed and returned, 3692–3
Parties excused on cause shown, and no costs if excused, 3695–6
Two notices not found, equivalent to judgment; excuse, when heard, 3697–8
FORGERY.
See "Offences against property."
Of pass for slave, felony, 3129
Of certificates, notes, or other evidences of debt, 3151
Of checks on banks; piecing bank bills; uttering forged bills, 3152–3–4
Of bills; acknowledgments on probate of deeds, 3155
Of seal of the state, or of a court, 3156
Misdescription of instrument withheld, immaterial, 3525
Altering, forging, or destroying office papers, records, &c., 3157
Forging bonds and other instruments not already mentioned, 3158
Making false certificate; punishable as, 3159
Counterfeiting coin; having it in possession, 3160–1
Making or engraving bank plates, 3162–3
Other forgeries not provided for; forgeries in the third degree, 3164

Punishment of the different degrees of forgery, 3165-6
Alteration or obliteration, to defraud, punished as, 3167
What instruments subjects of forgery, 3168
Forgery of printed signatures, 3169
FRAUDS AND PERJURIES, STATUTE OF.
See "Public Lands," see "Conveyances."
Conveyances in trust for grantor of chattels, &c., void as to creditors, 1550
Certain agreements, &c., void if not written and signed, 1551
Memorandum of auctioneer sufficient, 1552
Representations of another's credit, &c., to be written, in order to support an action, 1553
Conveyances to hinder, delay, or defraud creditors, void, 1554
Void as to creditors, if any benefit reserved to grantor, 1555
Assignments enure to the benefit of all the creditors, 1556
FREE BANKING INCORPORATIONS.
Mode of establishing; engraving of notes, 1373-4
Comptroller to countersign notes to amount of stock deposited, 1375
Amount of stock; notes signed and payable at their office, 1376-7
Stock held as security for the notes; comptroller holds plates and dies, 1378-9
Felony in comptroller to issue excess of notes; stock limited, 1380-81
Certificate to be acknowledged and recorded; its contents, 1382
Banking powers; officers of; stock, how transferred; personal property, 1383-4
Name, how changed, and stock increased; process against it by name; contracts of to be in writing, 1385-6
On return of "no property" against, *scire facias* to members, 1387
Process, how served on; members partners, if not regularly authorized, may hold real estate for certain purposes; how conveyed, 1390-1
Interest of member only subject to execution against him, 1392
Protest of notes, and notice to comptroller, 1393
On protest of one-tenth, commission to settle their affairs, 1394
Any one injured may sue on commissioners' bond. 1395
Property, effects, &c., delivered commissioners, with a full statement. 1396
Penalty for refusal to deliver property, 1397
All the assets vest in commissioners when appointed, 1398
Applied to redeem notes; publication of commission, 1399-1400
Stock also sold to redeem notes; notes received for their debts, 1401-2
Returns made and money paid comptroller, 1402
Money received applied to payment of notes, 1403
When all but one per cent. paid, assets, &c., returned, and allowance for their services made, 1404
Account of commissioners audited by judge of probate, 1405
Funds remaining after two years, returned, 1406
Note may be sued on afterwards, 1407
Felony to appropriate the effects after commission issues, 1408
Interest on stock paid to association; change to other stock allowed, 1409
Statement annually made to comptroller on oath; published, 1410
On failure to return statement, suspended and commission to issue, 1412
Stock, notes, and property assessed with taxes, 1413
Rate of taxation; notes receivable for public dues until failure, 1414-15
Use of bills of foreign banks restricted, 1416
Notes due on demand; penalty for usury, 1417
Lists and residence of stockholders filed annually, 1418
Defaced notes cancelled; issue of notes without authority, punished, 1419-20
Right of amendment or repeal reserved by the state; expenses of commission paid, 1421-2
Fees of judge of probate, 1423
FREE COLORED MARINERS.
List of sent to mayor on arrival of ship, 1005
Bond also given for their remaining on board, &c. 1046
In case of illness, taken to hospital, 1047
In default of bond, imprisoned till vessel sails, 1048
Captain to pay expenses and carry them away, 1049
Discharged and warned to leave, if not carried off, 1050
Imprisoned in penitentiary for failure to leave, 1051
Fees of officers, 1052-3-4
FORTHCOMING BONDS.
Property restored on bond to return it at sale day, 2467
Execution issued on return of forfeiture, 2468
Not to be received from defaulting officers, 2469
Value of property destroyed or lost, tendered in discharge, 2470
FREE NEGROES.
Not permitted to come to or remain in the state, 1033
Warned by sheriff, &c., to leave; penalty for delay, 1034
Penalty for presence at unlawful assembly of slaves, 1035
Not allowed to retail liquors; exceptions, 1036-7
Furnishing pass to a slave; penalty, 1038
Felony to aid slave's escape, 1039
To leave the state on discharge from penitentiary, 1040

Trading with slave; visiting slave; penalty, 1041–2
Receiving visit from slaves; preaching to without license, 1043–4

FUGITIVES FROM OTHER STATES.

See Con. U. S., page 20, § 2, art. 4th.
Delivered up on demand of executive, 3824
Justice issues warrants for; proceedings on examination, 3825–6
Committed to allow reasonable time for requisition, 3827
Bailed for bailable offence; in default of requisition, discharged, 3828–9
Jail fees in advance; forfeiture of bond returned, 3830–1
If no requisition on expiration of time, 3832
Governor may deliver up person prosecuted or imprisoned here, 3833
Sheriff, coroner, &c., to execute governor's warrant, 3834
Arrest in any part of state; aid to officer, 3835
Warrant executed as other warrants of arrest, 3836
Jailers must receive and keep such prisoners, 3837

GAMING AND WAGERING CONTRACTS.

Void, and money paid on recoverable, 1562
Money lost on recovered by any one for the loser's wife and children, 1563
One judgment bars another suit; winner may be garnisheed, 1564-5
Judgment or garnishment, bar each other, 1566–7
Loser a competent witness; defendant may deny on oath, 1568–9
Case then to be proved as in other suits, 1569
Either party examined; not prosecuted on answer, 1570

GAMING IN PUBLIC PLACES.

Punished by fine; character of indictment for, 3243–4
Punishment of tavern keepers, &c, for permitting on their premises, 3245
Solicitors may summon witnesses before grand jury, 3246
Witness required to answer; contempt to refuse to answer, 3247–8
Playing cards with slaves; betting with minors; penalty, 3255–6

GAMING TABLES.

Keeping or exhibiting, punished by penitentiary, 3249
Suspected gamblers arrested and held to bail, 3250
Fine of one hundred dollars for betting at, 3251
Indictment sufficient, without describing game, 3252
Owner of house permitting it to be kept, fined, 3253

GARNISHMENT.

On judgments. See "Attachments."
Issued on affidavit of plaintiff or agent, 2471
Stockholders of insolvent corporations garnisheed, 2472
Same proceedings on as in attachments, 2473

GATES.

Court may allow across public roads, on river bank, 1177

GENERAL.

See "Adjutant," "Quartermaster."

GENERAL ASSEMBLY.

See "Elections by," see "Senatorial districts," "Counties," "Apportionment," "Public Printing."
Constitutional provisions respecting, pp. 32 to 36
Amendment of the constitution, 48
Its regular sessions biennial; elections by, how conducted, 32–3
Members and senators of elected by the people, 173
Papers of after adjournment deposited with the secretary of state, 38
Engrossed laws, &c., when; papers, how filed, 39
Secretary to give a receipt for the papers, 41
Oath of members, how administered, 42
Pay and mileage of members, what, and how certified, 43–4–5
Officers of; their oaths, how administered, &c., 46
Assistant clerks and secretaries, 47
Pay of officers of, how certified, 48–9
Laws and journals, how distributed, 96
Copies sent to judge of probate, 97
Governor to give notice of vacancies to be filled by it, 168

GEORGIA.

Boundary between Alabama and, 16

GINS AND COTTON.

See "Cotton."

GIFTS.

See "Conveyances."
Parol gifts imperative without possession, 1297

GOVERNOR.

See "Pardons," &c., "Penitentiary."
See Con. Ala., art. 4., p. 36.
Elected by the people; when elected, 173–4
Employs counsel to defend jurisdiction of the state, 20
When authorized to cede jurisdiction to United States. 23
Allots rooms in the capitol to officers, 50
Employs a private secretary; pay of secretary, 51
Appoints commissioners of deeds, &c., in other states, 52
Governor's oath; his salary two thousand five hundred dollars, 53–4
Makes proclamation of special elections to congress, 192
Returns of elections of, made to speaker of the house, 235
Has casting vote for electors of president, &c., 342
Obtains lists of public lands sold annually, for judge of probate, 434
Contracts for printing reports when no reporter employed, 589

Appoints to vacancies in solicitor's office, 722
President of board of trustees of university, 842
To ratify or reject inspection laws, 853
Appoints commissioners of pilotage, 899–900
Directs proceedings against banks not paying specie, 938

GRACE, DAYS OF.

See "Bills of Exchange."

GRAND JURY.

See "Jury."

GRANT.

Warranty implied from use of, 1314
By the state made by patent; recorded by secretary of state, 1350–1
Patents issue on payment of the purchase money, 1352
To be recorded, and copies evidence, 1353

GUARDIAN AND WARD.

See "Lunatics."
Court of probate has jurisdiction of settlements with, 670
Guardians appointed by judge of probate of minor's county, 2012
Ward over fourteen years may choose a guardian, 2013
Father has the preference; if not guardian, has the custody of the ward, 2014
Father appoints by will; mother has custody of child under fourteen years, 2015
Judge of probate appoints guardians for idiots, &c., 2016
Sheriff appointed when no suitable person will act, 2017
Bond and security required of guardians, 2018
Renewal of bond; additional security, when required, 2019
Bond to be approved by and filed in office of judge of probate, 2020
Guardian returns an inventory; annual settlements made, 2021–2
Final settlements made on ward's majority or marriage, 2023
To lend ward's moneys at interest, taking good security, 2024
Judge may direct ward's estate to be kept together, 2025
He may allow him to hire ward's slaves at valuation, 2026
If income not sufficient, estate sold for ward's education, 2027
Terms of the sale, notice and confirmation of by court, 2028
Sale for re-investment, when allowed, 2029
Guardian cited to make settlements; removal on failure, 2030
Removal of ward and his estate to another state, when allowed, 2031
Removal of, when guardian and ward both non-residents, 2032
Compliance with the law proved, before order of removal, 2033
Order of delivery to foreign guardian discharges representative, 2034
Removal of ward's estate to another county; change of jurisdiction, 2035
Guardians sue in their own names for ward's benefit, 2036
Removal of guardian by judge of probate; causes, &c., 2037
Penalty for failure to make settlement, 2038
Settlements by, made as by executors and administrators, 2039
Orders and decrees against, enforced by attachment, &c., 2040
Settlements corrected in chancery, within two years after ward's majority, 2041

GUNPOWDER.

See "Magazines."
Not to be stored in large quantities in towns, 1118
Magazines for storage established in towns; in Mobile, 1119–20

GUARDS.

See "Jails and Jailors," "Penitentiary."

HABEAS CORPUS.

See "Bail," "Jails and Jailors," "Criminal Prosecutions."
Who entitled to the benefit of, in state courts, 3708
Prisoners under process of United States courts, when denied, 3709
If prisoner confined privately, any justice may issue, 3710
When issued by judge of probate, 3710
When by chancellor or circuit judge, 3710
Application made to nearest judge or chancellor, 3711–12
Contents of the application for; how returnable, 3713–14
Form of the writ; description of prisoner, 3715–16
Writ not to be disregarded for want of form, 3717
Precept to take the prisoner's body also issues, 3718
To be dealt with when produced under as on return of writ, 3719
Notice to be given to party having an interest, 3720
Notice to the solicitor, when held under criminal charge, 3721
Subpœnas, by whom issued and how executed, 3722–3
Habeas corpus served by sheriff or constable, 3724
Mode of service; in case of concealment, 3725–6
Return, by whom and when made; contents, 3727–8
Return sworn to; prisoner to be produced, 3729–30
If prisoner sick or infirm, proceedings, 3731
Contest of facts stated in return and trial, 3732
Examination, when adjourned; disposition of prisoners, 3733–4
Forfeiture of bail by party bailed under, 3735
If offence charged bailable, may be bailed, &c., 3736
Unreasonable bail required in civil cases reduced, 3737

Sheriff may discharge on giving the required bail, 3738
Recognizance, to whom returned, 3739
Prisoner, when to be remanded, 3740
Sentences and orders of courts, and justice of commitment for contempt not to be inquired into, 3741
United States soldiers and sailors, or fugitives from other states not discharged under, 3742
Right of freedom of those held as slaves not determined under, 3743
Cases in which discharged from custody under judicial process, 3744
The court, judge, or chancellor may bail in bailable cases, 3745
Provisions when commitment is irregular, 3746
After discharge under, not to be arrested; penalty, 3747–8
Penalty for failure to give copy of warrant on demand, 3749–50
Penalty for refusing to receive or obey writ, 3751
Attachment for such cause, to whom directed, 3752
Changing custody to elude writ, penalty for, 3753
Default of witnesses; proof and tax of witness fees, 3754–5
Costs, on whom imposed, 3756
Fees of officers; execution for costs, how returnable, 3757–8–9
Guards, penalty for refusing to act as; pay of sheriff, 3760–1–2

HABERE FACIAS POSSESSIONEM.

See "Real Actions."
Form of the writ, page 446.

HALF BLOOD.

See "Descents and Distributions."
Not distinguished from whole, except when the inheritance comes from one side, 1576
Whole preferred in grant of administration, 1670

HARBOR MASTER.

See "Port and Harbor of Mobile."
To notify sheriff of arrival of free colored mariners, 1048

HARBORING SLAVES.

Punished by fine and imprisonment, or penitentiary, 3126

HEALTH, PUBLIC.

See "Hospitals," "Quarantines," "Physicians," "Unwholesome Provisions," "Nuisances,"

HEIRS.

See "Descents and Distributions," "Conveyances," "Rule in Shelly's Case."
Take as tenants in common, 1588

HIGHWAYS.

See "Roads."
All navigable streams are public highways, 1205

HOMESTEAD.

Exempt from levy and sale under execution, 2462
Value not to exceed five hundred dollars; value how settled, 2463

HOMICIDE.

See "Murder," "Manslaughter."

HORSES.

See "Estrays," "Stallions."
Tax on, 391
Horse stealing, buying stolen horses, 3180–1

HOSPITALS.

How established; nuisances to health, how abated, 956–7–8
Strangers with contagious diseases; how disposed of, 957–8
Quarantine ground and rules of; how established, 959–60–1
Penalty for breach of; vessels, how quarantined, 962–3
Refusal of captain to answer health officer, 964
Penalty for breach of quarantine order, for escape from, 965–6
Land travelers, when quarantined, 967
Expenses of quarantine, how paid, 968
Fines paid to town; town defined, 969–70
Free colored mariners, when taken to, 1047

HOUSES OF WORSHIP.

See "Religion."

HOTCHPOT.

See "Advancement," "Distribution."

HUNTING UNLAWFULLY.

See "Fire Hunting," "Sunday."

HUSBAND AND WIFE.

See "Marriage."
Husband not liable for wife's debts before marriage; she may be sued at law alone for them, 1981
Wife's property secured to her separate use, 1982
Husband is trustee and enjoys the profits, but they are not liable for his debts, 1983
Property of wife conveyed only by deed in writing, signed by herself and husband, attested by two witnesses, 1984
Proceeds of sales subject to same trusts, 1985
Husband's receipt a good discharge, 1986
Husband and wife both liable for family supplies, 1987
Wife's property sold under such judgment by order of court, 1988
She to have notice of such motion, 1989
Husband takes half her estate if she dies intestate, 1990
Wife having certain separate estate, excluded from dower, 1991
She only takes enough to make her estate equal to the portion, 1992
Separate estates acquired before first March, 1848, subject to same rules, 1993
Husband removed from the trust by chancery, when unfit, 1994
Decree of removal makes wife a feme sole, 1995
Injunction granted to protect the property pending the suit, 1996
All property received since first March, 1848, embraced, 1997
When joined as parties in action at law, 2131

Protection to wives and families against improvidence or intemperance of the husband or father.
Protection claimed by bill in chancery, 1998
Trustee appointed on proof or admission of charges, 1999
Management and disposition of the property, 2000
Security required of husband, pending suit, 2001
On proof of reformation property restored, 2002
On petition, wife allowed to retain her earnings, 2003
Decree making her feme sole as to her acquisitions, 2004
Proceedings determined at first term, 2005
Voluntary separation of.
Custody of children settled by decree of chancellor, on petition, 2006
Mode of conducting trial; protection of children pending suit, 2007

IDIOTS.

See "Guardians," "Lunatics," "Court of Probate."

ILLEGAL VOTING.

See "Elections."
Penalty for voting out of county, or without qualification, 355
For voting more than once at same election, 356

IMPROVEMENTS.

See "Real Actions."
Tenant suggesting adverse, possession of three years paid for, 2203
On public lands may be sold, 1561

IMPRISONMENT ON CONVICTION.

See "Jails," "Penitentiary," "Insolvent Debtors," "Habeas Corpus."
Court fixes imprisonment, if not provided otherwise, 3621
In penitentiary, only inflicted by express authority, 3622
If no term fixed, may be imposed for life, 3623
Imprisonment for fine and costs, 3625
In addition to the time fixed by law, 3626
Payment of fine no bar to additional imprisonment, 3628
In misdemeanors, punished by fine by the Code, no imprisonment if fine paid, 3629
Effect of sentence to penitentiary, if for life, 3636–7

INCEST.

Defined, punished by penitentiary, 3234

INCORPORATIONS, MODE OF ESTABLISHING.

See "Free Banking," "Religion and Education," "Towns," "Roads," "Manufacturing," "Corporations," "Foreign Corporations."
Acts chartering continued in force by the Code, 10

INCOMES.

Of officers of corporations and public officers, tax on, 391
Professional, tax on, 391
Penalty for not keeping an account of, 392

INDEMNIFYING BONDS.

See "Attachment," "Execution," "Summary Judgments."
Required by sheriff before levy in case of doubt, refusal waives lien, 2444–5

INDIANS.

Not competent witnesses against whites, 2276
Consideration of claim against, to be proved by two witnesses, 2277

INDICTMENTS.

See "Jury."
Forms of, pages 698 to 709, appendix.
Prisoner entitled to copy of in capital cases, 3576
Definition of; distinction between and presentments abolished, 3497–8
Twelve to concur to find a bill, indorsed and signed by foreman, 3499
Name of prosecutor, or fact that there is none, indorsed on; penalty, 3500
Contents of the indictment, 3501
Form of the indictment, 3502
To correspond with forms in appendix, 3503
For common law offences as at common law, 3504
Certainty as to party charged, if name unknown, 3505
When different offences may charged in same count, 3506
When jury believe one of two guilty intents or modes, to convict, 3507
Conviction under when one of two results (criminal) has been effected, 3508
Alternative charge of intents in same count, 3509
Means, if unknown, may be so alleged, 3510
Time, if not material, alleged generally, as before finding, 3512
Unknown facts, if not material, so charged, 3513
Charge of commission within the county sufficient, 3514
Degree of certainty required in statement of the act, 3515
Presumptions of law not stated, 3516
Words in construed as in their popular meaning, technical excepted, 3517
Words of statute not pursued, defects in form immaterial, 3518–19
Judicial proceedings, how set out in, 3520
Statement of ownership of joint property, 3521
Intent to injure or defraud stated generally, 3522
Special terms of statute embraced by general, 3523
Indictment for libel; misdescription in forgery, when immaterial, 3524–5
Accessories before the fact, in felonies, indicted as principals, 3526
Lost indictments, limitations cease to run against, 3527
Entry in relation to; may be amended by consent of defendant, 3528–9
If defendant refuses, limitation not to run, 3530
Entry in case of amendment or refusal, 3531

If judgment arrested or quashed, new indictment preferred, and limitations not to bar, 3532
Entry of record in such case; public place, how charged, 3533-4
Of presenting and filing indictments in court.
See "Arrest."
How presented to the court, amendment, 3535
No entry of finding made, except when defendant in custody or on bail, 3536
Not inspected by any person till arrest made, 3537
Penalty for disclosing before arrest, 3538-9
Not quashed, &c., without leave of court, 3540
Defendant, if present, ordered into custody, 3541

INFANTS.

See "Limitation of Actions," "Marriage," "Guardian and Ward," "Minors."
Conveyances of personal property to be recorded, if parent in possession, 1296
Trusts for accumulation for permitted, 1310
When wives may relinquish dower, 1358
Betting with punished by fine and imprisonment, 3255
Penalty for selling poisons to, 3278
Penalty for selling liquors to, 3281
Sue by next friend, and defend by guardian, 2132

INFECTIOUS DISEASES.

See "Hospitals."

IN FORMA PAUPERIS.

See "Poor."

INHERITANCE.

See "Descents," &c.

INJUNCTIONS AND APPOINTMENT OF RECEIVERS.

Granted only by chancellors and judges of the supreme and circuit courts, 2971
Injunction to a judgment releases errors, 2972
Bond and security required on injunction of judgment, 2973
Bond for rents required on injunction of judgment for recovery of lands, 2974
In other cases, to pay the damage incurred is required, 2975
Application refused by a circuit judge not to be renewed to another, but to a chancellor or judge of supreme court, and if then refused, not to be renewed, 2976
Application not made to supreme court judge, unless refused by some other judge, 2977
Refusal to grant indorsed on the bill, 2978
Damages granted if injunction obtained for delay, 2979
Bond has the force of a judgment on dissolution of the injunction of a judgment, and execution issues, 2980
Execution for costs against the parties to the bond, 2981
If injunction dissolved pending the suit, refunding bond required before execution, 2982
Motion to dissolve allowed in vacation on ten days' notice, 2983
Appeals allowed to the supreme court on such orders, 2984
Notice of injunction of judgment may be served on an attorney, 2985
Receivers appointed only by chancellor, notice of application in vacation to be given adverse party, 2986
Money collected before notice of, to be returned, 2452

INLAND BILLS.

See "Bills of Exchange."

INQUISITION.

See "Lunacy," "Coroner's Inquest."

INSANE.

Definition of, 1
Certain property of, exempt from taxation, 390
Asylum for established by act 1852.

INSOLVENT ESTATES.

See "Executors and Administrators," "Estates of Deceased Persons."
Order of payment of debts of, 1741-1828
Report of insolvency filed by representative, 1829
Statement sworn to filed with report, its contents, 1830-1
Notice given by publication, and day set for hearing the report, 1832
Trial of the question; issue of insolvency, when tried by jury, 1833-4
If verdict found against, report set aside and costs taxed, 1835
Costs when report is sustained, 1836
But one issue to be made; declaration of insolvency, 1837-8
Notice of such declaration, and day fixed for settlement, 1839
Creditors nominate administrator, 1840
Manner of voting for; in presence of the court, 1841-2
Plurality nominates; appointment to vacancy, 1843-4-5
Former letters revoked by the appointment, 1846
Claims against barred if not filed in nine months; affidavit on filing claim, 1847
Claims of infants, &c., excepted, 1848
Certificate when oath is made in another state, 1849
Certificate when made in another foreign country, 1850
Receipt given for claims filed, date of filing indorsed, 1851
Docket made of claims filed; allowed if not objected to, 1852-3
Objections, when and by whom made and how tried, costs, 1854
Part found due to be allowed, costs, 1855
Settlement to be made when ordered after nine months, 1856
Debts then paid rateably; other settlements in nine months, 1857
Suits against representatives continued till report of insolvency is tried, 1858
Representative may plead declaration of insolvency, 1859

Judgment then certified to probate court, 1860
If an appeal on the report is pending, case continued, 1861
Claims not due may be presented and interest deducted, 1862
If allowed after partial distribution, take a full share, 1863
May recover from those who have received dividends, 1864
Payments made to another creditor reduces recovery; costs, 1865-6

INSOLVENTS, LIST OF.

See "Tax Collector."

INSOLVENT DEBTORS.

See "Bail."
How discharged from arrest under execution, 2741
Notice of application for discharge given plaintiff, 2742
And to solicitor on the part of the state, 2743
Proceeds of effects in the schedule ratenably divided, 2744
After acquired, property liable but debtor not again imprisoned, 2745
Return of schedule and sale by sheriff, 2746
Notice to debtors on insolvent's schedule, 2747
Proceedings against such debtors, 2748
Discharged on denial of indebtedness, 2749

INSPECTORS.

See "Penitentiary," "Elections."

INSPECTORS AND INSPECTION LAWS.

How appointed and adopted for Mobile; subjects of inspection, 853

INSPECTORS OF ELECTIONS.

See "Elections,"
Of general elections appointed by judge of probate, 196
By sheriff if judge fail; notice to inspectors, 197
Appointed by sheriff at special elections, 194
Fine of for neglect or improper conduct, 359

INSURANCE COMPANY.

Tax on premiums of foreign, 391
False invoice to defraud; false protest, 3134–5
Destroying vessel or burning building to defraud, 3136-7

INTEREST.

Eight per cent. the legal rate; accrues on breach of contract, 1519-20
Judgment and decrees bear interest; partial payments applied to, 1521–2
Usurious not enforced, and if paid deducted from balance due, 1523
Notes for circulation, of one dollar or less bear one hundred per cent., 1524

INTERPRETERS.

Sworn to interpret evidence when necessary, 275

INTERROGATORIES.

See "Evidence," "Chancery."

INTESTATES.

See "Descents," &c., "Executors and Administrators," "Estates of Deceased Persons."

ISSUE OUT OF CHANCERY.

See "Chancery," page 535.

JAILS, JAILORS AND PRISONERS.

See "Imprisonment on conviction," "Penitentiary," "Insolvent Debtors," "Prison Bounds," "Sheriff," "Bail," "Habeas Corpus."
Court of C. C. must erect; special tax levied, 768
Character of buildings; at least three apartments, 769
Tax levied to build or repair jail; penalty for neglect, 770–1
Grand jury to inspect it, and prosecute commissioners for neglect, 772
Who to be imprisoned in county jail, 3838
Sheriff is jailor, and may appoint a deputy, 3839
Separate apartments kept for males and females, 3840
Jailor to file and keep orders of commitment, 3841
Successor to receive jail, prisoners and papers, 3842
Punishment for refusal to deliver to him, 3843
Jailor supports prisoners, or they supply themselves, 3844
Penalty for permitting liquors to prisoners, 3845
Convict chargeable with jail fees; additional clothing, 3846–7
Guard for jail, when employed; prisoners sent to nearest jail, 3848–9
How removed to secure jail when county jail is insecure, 3850
Guarded on removal; removal in case of fire, 3851–2
Prisoner in failing health; how removed, 3853
Guarded on such removal; United States prisoners not removable, 3854–5
Penalty for escapes of such prisoners, 3856
Court furnished with a list of prisoners, 3857
Plaintiff pays fees of prisoner under civil process, 3858
United States prisoners to be received and kept; penalty for escape, 3859–60
Marshal to pay their fees, 3861
Jailor to supply slaves with blankets, 3862
Jailor refusing to receive prisoner into custody, 3213

JEOFAILS.

See "Amendments," "Pleading."

JOINT TENANTS.

Survivorship between abolished.

JOINT DEBTORS.

See "Attachments."

JOINT OBLIGORS.

See "Parties to suits," "Abatement."
In notes, &c., sued singly or together, 2143

JOURNALS OF THE GENERAL ASSEMBLY.

See "Laws and Journals."

JUDGES.

See "Courts" and title of each "Court," "Justices;" see "Chancellors," "Elections."
Disqualified from trying certain causes, 560
Salaries of, not diminished during their term; Con. Ala., page 40.

Cannot hold office after reaching the age of seventy years; Con. Ala., page 40.
Election and terms of office of; see Con. and Am. Con., page 40-49.

Of supreme court.

Five judges, (see note); elected by general assembly for six years, 566
Cannot practice as attorneys, 739
Are trustees of the University, 834
Authority of the judges; salary twenty-two hundred and fifty dollars, 569-74

Of circuit courts.

Elected by people of the circuit, (see "Circuits"); when elected, 173-7
Contest of election of, (see "Elections,") 326 to 333
One elected for each circuit; term of six years, 626
Deduction made from salary for failure to hold court, 638-9
Salary fifteen hundred dollars.
Removal from circuit vacates the office, 631
Vacancies filled by appointment by governor, 627
Authority of judges at common law; grant writs of certiorari, supersedeas and mandamus, injunctions and ne exeat, 629
They alternate with each other, 630
They cannot practice as attorneys, 739
Mode of trying cause when judge incompetent, 640

Of probate.

See "Courts of Probate," "Courts of County Commissioners"; see "Executors and Administrators," "Estates of Deceased Persons," "Guardians," "Distribution," "Legacy," "Dower," "Poor," "Roads," "Elections," "Election Precincts," "Incorporation of Towns and Religious Societies," &c., "Free Banking," "Licenses," "Taxes," "Estrays," "Marks and Brands," "Escheats," "Weights and Measures," "Township Schools," "Runaway Slaves," "Salvage," "Emancipation," "Certiorai."
Elected by the people of the county for six years; Am. Con., page 49.
Elections held on first Monday of May, 177
Fees of judge of probate, 3046
Compensation of for tax services, 500
Receives ninety dollars for road services, 1186
Cannot practice as attorneys in certain cases, 740
Summary proceedings against for taxes collected, 2628

JUDICIAL POWER OF THE STATE.

See "Impeachment."
In what courts vested; see Con., page 39, and Am. Con., 48-9.
Courts and officers vested with judicial authority, 559
Judges disqualified from trying certain cases, 560
Summary power of courts, 561
Ordinary powers incident to all courts, 562
Punish for contempt, to enforce authority, 568
Records of courts not to be removed from county, &c., 564
Minutes read each morning in open court, 565
Judges' salaries not diminished during their terms; Con., page 40.
No judge to hold office after reaching the age of seventy years; Con., p. 40.

JUDICIAL ATTACHMENTS.

See "Attachments, judicial."

JUDICIAL CIRCUITS.

See "Circuits."

JUDICIAL PROCEEDINGS.

See "Actions, civil," "Chancery," "Criminal Prosecutions," "Appeals," "Impeachments," "Justices of the Peace," "Courts of Probate," "Executors and Administrators."

JUDGMENTS.

See "Summary Judgments," "Justices;" lien of, see "Executions."
Confession of releases errors, 3036
When taken by default on notes, &c., clerk computes interest, 2366
Also damages, if on a bill of exchange, 3366
On penal bond restricted to sum due, 2367
Actions on and decrees barred by limitation of twenty years, 2475
In same court may be set off on motion, 2242

Revival of.

If execution issued within a year others issue for ten, 2418
Scire facias if none issued within the year; presumed satisfied in ten years, 2419
Last section not to apply to existing judgments, 2420
No revival by scire facias after twenty years, 2421
Execution without revival in favor of administrator, de bonis non, 1926
Judgment against deceased revived only by suit against representative, 1930

JURISDICTION.

See title of each court, "Justices."
Of the state; its extent and character, and how defended, 18-19-20
When to be ceded by governor to United States, 23
Of counties over navigable streams, 24
Plaintiff suing for or recovering less than court's jurisdiction when non-suited, 2365
All liable for offences in this state not exclusively belonging to the United States courts, 3360
Local jurisdiction belongs to the county where committed, 3361
If commenced without the state, 3362
Commenced without and consummated within the state, 3363
Committed in several counties; on county line, 3364-5
When female under fourteen carried into different counties, 3366
Slave stealing or inveigling, 3367
Stolen property brought to the state, 3368
Stolen in one county and carried to another, 3369

JURORS AND JURIES.
See "Bribery," "Forfeitures"
Selection of grand and petit jurors, and their compensation.
List of those competent to serve; how made, 3436–7
None but fit persons to be selected; exempt persons, 3438–9
Who exempt from duty, 3440
List of those selected filed with judge of probate, 3441
Names folded and placed in a box, 3442
Grand juries; when drawn; number, 3443
Petit jurors; their number, 3444
Jurors for special terms for unfinished business, 3445
For trial of capital felonies at special term, 3446
Manner of drawing jurors, 3447
Persons drawn not to serve again until whole list drawn, 3448
List of grand jury delivered to clerk, 3449
Also of petit juries and their times of service, 3450
Venire for grand jury and petit juries, 3451–2
Contents of venire; how served, 3453
Returned by meeting of the court, 3454
Penalty for failure to attend, 3455
Excuses when rendered; notice of conditional judgment, 3456–7
How executed; re-issued if not found, 3458
When judgment final; when juror discharged, 3459–60
Names of jurors not attending or excused, returned to the box, 3461
Number of the grand jury; foreman appointed, 3462–3
Deficiency, how supplied; persons summoned, 3464–5
Requisite number drawn, 3466
Oath of foreman; of other jurors, 3467–8
Special grand jury; when selected, &c., 3469
Provisions as to selection, &c., directory, 3470
Court must examine qualification of grand jurors, 3471
Penalty on officers not drawing juries, 3472
Selection, how made; when no jury returned, 3473
Disposition of jurors upon juries; bystanders called in, 3474–5
Talesmen not to serve but one day; talesmen, when fined, 3476–7
Oath of petit jury; of talesmen, 3478
Boxes to hold names of jurors kept securely by judge of probate, 3479
Penalty for drawing jury unfairly, 3480
Pay and mileage of grand and petit jurors; talesmen, 3481–2
Pay made on certificate, out of county treasury, 3483
Certificates of jurors receivable for county dues, 3484

THE GRAND JURY; ITS POWERS AND DUTIES.
Inspects the jail, county treasury, and bonds of county officers, and inquires into indictable offences, 3485
Has access to records and county offices, 3486
Discretion as to affrays and assaults, and other misdemeanors, 3487–8
Each juror must discover all offences known to him, 3489
When required to state evidence of a witness, 3490
Witnesses before, sworn by foreman or solicitor, 3491
May apply for subpœna; failure to attend, 3492
Solicitor attends and advises grand jury, 3493
What evidence admissible; when juror charged, 3494-5
Deficiency of jurors, how supplied in such case, 3496

JURIES IN CIVIL CASES; GENERAL PROVISIONS.
Challenge of four jurors allowed in civil cases, 2262
How elected; struck jury, when allowed, 2262
Charge of court to, 2275

JURIES IN STATE CASES; GENERAL PROVISIONS.
Copy of indictment and list of jury furnished prisoner, under capital charge, 3576
This applies only to regular jurors, 3577
Numbers summoned in capital cases; penalty in default, 3578-9
How made up in capital cases; challenges allowed prisoner, 3580 1
Challenges allowed the State, 3582
Causes for challenge of juror; how proved, 3583-4
Other causes for challenge in felonies, 3585-6
Alien not entitled to jury of part aliens, 3588
Pleas to organization of grand jury; special grand jury, 3591-2
Duty of juror knowing facts relative to the case, 3602
Jury discharged in case of sickness of juror, or adjournment, 3603-4
Discharge of juror before retirement, for sickness, 3607
Verdict against such defendant, as they agree on, 3605
Jury polled by either party, 3604

JUSTICES AND CONSTABLES.
Powers and duties of, in civil cases.
Justice to fix a day for hearing civil cases, at least monthly, 2764
Actions on contracts by the real party, and for damages to property by the injured party, 2765
Suits commenced by summons; cause of action indorsed; form of summons, 2766
Summons to be executed three days before return day, 2767
Suit brought in defendant's precinct, or where cause of action arose, 2628
When there are several defendants, suit brought in either precinct, 2769
If there is no justice, or if incompetent, suit brought in the next precinct, 2770
Bail on such conditions as in other courts, 2771
And defendant discharged in the same manner, 2772

Depositions taken in such suits in certain cases, 2773
Subpœnas to be issued, and to be executed by the constable, 2774
May be served in another county, if in ten miles, 2775
Conditional fine against defaulting witnesses, and excuses made on return, 2776
Execution, if judgment made absolute and fine paid into county treasury, 2777
Witnesses' fees fifty cents per diem, 2778
Either party competent, when the sum is less than twenty dollars, 2779
Rules of evidence as to competency of witnesses the same as in other cases, 2780
See "Evidence."
Judgment at return term, unless cause shown for a continuance, 2781
Judgments in detinue, for the property or its value, 2782
Execution in five days, if no appeal, and returnable in twenty, 2783
Form of execution, 2784
Execution issues immediately on affidavit of plaintiff, 2785
Set-off of any claim arising out of contract, and judgment for excess, 2786
When offset exceeds fifty dollars, after absorbing plaintiff's demand, 2787
Execution stayed sixty days, on giving security, 2788
Ca. sa. issued as in other cases, and defendant discharged from arrest in the same manner, 2789

JUSTICES.

Duties of in issuing warrants and committing to jail or bailing in criminal cases. See "Criminal Prosecutions, commencement of;" see olso "Criminal Prosecutions; proceedings to keep the Peace;" see "Summary Judgments before," "Attachments before," and "Attachments;" see "Election of Justices and Constables," "Estrays," "Patrols," "Slaves," "Free Negroes," "Fences," "Oysters," "Unholesome Provisions," "Roads," &c., "Salvage," "Trial of Right of property before," "Forcible Entry and Detainer,"
Meaning of the word in the Code, applied to a magistrate, 4
Two elected for each precinct; when elected; by whom, 253–4
Term of office; vacancies filled by special election, 708–9
Bond if approved by judge of probate, 710
Jurisdiction of, in civil cases, 711
Are conservators of the peace; their authority, 712
Their duties; are to keep a docket of cases and enter returns and judgments; to keep an office in the precinct; issue process and pay over money collected, 713
Removal from precinct vacates office; penalty for acting after, 714
Fees of justices in civil cases, 3049

Powers and duties of justices and constables.

Justice's judgment bars other suits. 2790
Justice's statement of the judgment is evidence of the fact, 2791
Justice of the same precinct completes unfinished business on the death of the other, 2792
Constable attend regular term of the court, 2793
Property levied on, except slaves, sold within the precinct, 2794
Slaves not to be levied on if other property can be found, 2795
Land levied on if no personal property can be found, 2796
Notice of levy on land to be given defendant, 2797
Order for sale of land on motion of plaintiff, 2798
Proceedings recorded on such order and sale, 2799
Defendant may retain possession on giving a forthcoming bond, 2800
On forfeiture, execution issues and no stay allowed, 2801
Return made to justice of the county, on forfeiture of bond on an execution from another county, 2802
Bond not vitiated by defect in form, 2803
Execution sent to another county, to be certified by a judge of probate, 2804
Such executions returnable in thirty or sixty days, 2805
Lien only on the property levied on and from the time of levy, 2806
Proceeds divided rateably among executions received at the same time, 2807
Same property exempt from levy as in other cases, 2808
Bond of indemnity required in cases of doubt, before levy, and priority waived by refusal to give bond, 2809
Constable and sureties liable for money received before or after judgment, or return day of execution, 2810
Appeals to circuit court allowed for five days, on giving bond, &c., 2811
Papers and statement of judgment returned to court on the appeal, 2812
Subpœnas issued by justice and served by constable to appear at the appeal trial, 2813
Appellee to have notice five days before return days, 2814
If execution issues in six months, others may issue at any time, 2815
If none were issued, notice to defendant before issuance, 2816
Death of either party abates the suit unless revived by notice to representative in six months, 2817
No judgments rendered against representative till eighteen months after appointment 2818
Rules of proceedings of circuit court and limitation of actions apply to justices' courts, 2819

JUSTIFICATION.
See "Slander."
Officer may justify under process regular on its face, 2284

KIDNAPPING.
Defined; how punished, 3101

LANDS.
See "Public Lands," "Real Actions," "Limitations," "Descents," "Wills," "Conveyances," "School Lands," "University Lands," "Partition," "Escheats," "Redemption of Real Estate," "Dower," "Remainders." "Taxes."
Taxed according to real value, 386
How acquired in Alabama by U. S, 21–2
Settlement of in perpetuity, forbid, 1308
Leases of, for more than twenty years, forbid, 1311
Conveyance of, attested by a witness, 1266
Conveyance of, recorded in county where situated, 1273
Wills to be attested by two witnesses, 1611
Conveyed by instrument without seal 2198

LANDLORD.
Made defendant in real action, on motion, 2205

LANDING OF GOODS ON THE RIVER.
See "Engineers and Steamboats."

LARCENY.
From dwelling house, how punished, 3170
Conviction of, disqualifies elector, 171
Petit by slaves, and offences of same grade punished by stripes before justice, 3317
From building on fire; from the person, 3171–2
Grand larceny defined; felony, 3173
Petit larceny; how punished, 3174
Judgment for value of stolen property, 3175
Grand larceny to steal or destroy deeds, &c., 3176
Receiving stolen goods, 3178
Buying or receiving stolen slaves, 3177
Horse stealing; buying stolen horses, 3179–80
Indictment for horse stealing, how drawn, 3181

LAWS AND JOURNALS OF THE STATE.
General assembly alone, can suspend the laws, Con. Ala., page 30.
How distributed, 96–7–8
Agents appointed to distribute, 99–100

LAWS OF THE UNITED STATES.
Acts of congress procured by governor for each judge of probate for the use of his county, 101
Books relating to public land also sent them, 102
Acts of congress sent by mail, other documents with the laws and journals, 103–4

LAWYERS.
See "Attorneys," &c.
Taxes on incomes of, 391

LAW MERCHANT.
See "Bills of Exchange and Promissory Notes."

LEASES.
See "Rents," "School Lands," "Salt Springs," "Executions."
Lease of penitentiary, see "Penitentiary."
For more than twenty years forbid, 1311
For more than a year void if not written, &c., 1551
Rent, if due is tendered, 2460

LECTURES.
Taxes on, two dollars each; fine for default, 395

LEGACY AND LEGATEE.
Tax on legacy except from certain persons, 391–4
Payment of, compelled after eighteen months, 1772
Application for order of payment; its contents, &c., 1773
Hearing of case: order of payment on giving refunding bond, 1774–5
To whom payable; amount and condition; value of legacy, interest, &c., 1776–7
Legacy recovered at law after eighteen months, 1931

LEGITIMATING AND ADOPTING CHILDREN.
Children legitimated by marriage of parents, 2008
By declaration of father, in writing, duly recorded, 2009
Name of child changed at same time, 2010
Child adopted as heir, in same manner, 2011

LETTEES TESTAMENTARY AND OF ADMINISTRATION.
See "Executors and Administrators."

LEVY OF EXECUTION.
See "Executions."

LEVY OF ATTACHMENTS.
See "Attachments."

LIBEL.
Indictment for; what to charge, 3524
Barred by one year's limitation, 2481

LICENSES.
See "Taxes on Licenses collected by judge of probate;" see "Marriage."
To retail liquor; tax on; punishment for retailing without, 397–9
For what period granted; penalty for acting without, 398–9
To be exhibited when required by an officer, 401
List of, furnished grand jury, 402

LIENS.
See "Executions," "Mechanics' Lien," "Mortgages," "Attachments," "Admiralty," "Decrees." "Judgments," "Justices' Judgments," "Rents."

LIMITATION OF ACTIONS.
Of civil actions.
Same in chancery as at common law, 2928
Suits for dower barred in three years, 1372
Actions to be commenced within the following periods and not after, 2474
Within twenty years, by the state against a citizen, or on a judgment or decree, 2475

Within ten years, on contracts under seal, real actions, and against officers for official misconduct,
Within six years; detinue; trespass to property; written promises not under seal; on stated account; for rent due on parol demise; use and occupation, &c., against sureties of officers, guardians, executors or administrators; against attorneys failing to pay over money; on justice's judgments and other contracts not specified.
Within five years, on equities of redemption, by any one not a party to the mortgage, &c.,
Within four years, against sureties on official or replevin bonds in other states,
Within three years, on open accounts, computing from last item,
Within one year, for assault and battery; false imprisonment; malicious prosecution; crim. con.; seduction; breach of marriage promise; quitam actions; penalties; slander; libel; attachment of steamboat, or for injury to person or rights not specified,

General rules.

Entry presumed when right accrued,
Right of entry not tolled by descent cast,
Period of defendant's absence from state deducted from the time since the action accrued,
If judgment is recovered and reversed, a year allowed to commence suit,
Three years after removal of disability allowed to infants, lunatics, married women, &c., not extending more than twenty years,
If action accrued in another state, is barred there, it is also barred here,
Not to include accounts between merchants, &c.,
In open accounts, time computed from date of last item,
Partial payment or promise in writing necessary to avoid the bar of the statute,
Right of action considered as commencing from the date of the cause, and not the demand,
Time computed from discovery of a fraud,
Suing out summons, is commencement of suit,
Time between death and grant of letters, not computed until after six months,
Time of exemption from suit not computed,
Action against deputy, time computed from judgment against principal,
Time of injunction, &c., not computed,
Disability after action accrues does not suspend the operation of the limitation,
If two disabilities exist, both must be removed,
Time of war not computed as to citizens of the enemy's state,
Notes, &c., circulated as money not included in provisions of this chapter,
Subsisting causes to which the chapter applies,

LIMITATION OF CRIMINAL PROSECUTIONS.

No limitation of capital offences,
No limitation as to certain other offences,
Perjury and subornation of perjury, five years,
Other penitentiary offences barred in three years,
Misdemeanors barred in one year,
Petty offences barred in six months,
Prosecutions commenced by warrant of arrest, &c.,

LIMITED PARTNERSHIP.

See "Partnership."

LIQUORS.

See "Retailers," "Free Negroes,"
Selling to students or minors; punishment,
Felony in retailer selling to slave,
Selling or giving liquor to slave without written order,

LIVERY OF SEISIN.

Dispensed with; deed has the effect of,

LYNCHING.

By two or more, how punished,

LOANS OF PERSONAL PROPERTY.

See "Conveyances."
In writing or by will, to be recorded or void as to creditors, &c., after three years' possession,
Without writing subjects it after three years,

LOST NOTES, BILLS, &c.

Suits, how brought on,

LOTTERIES.

Fine for setting up without authority,

LUNATICS, IDIOTS, &c.

See "Guardians."
Asylum for lunatics, see acts, 1852.
Judge of probate appoints guardian for,

Inquisition of lunacy.

On petition to judge of probate and affidavit, jury summoned to inquire,
Jurors sworn, and on verdict of insanity guardian appointed,
Rights, duties and liabilities of the guardian,
Provision for support of ward's family,
Settlement made as by other guardians,
Discharged on reporting ward's restoration,
Ward may petition court, showing doctor's certificate,
Order of discharge of guardian, if facts proved,
If restoration disputed, tried by a jury,
Judgment if verdict in favor of ward, costs,
Pauper lunatic provided for by overseer of poor,

Fees of judge, sheriff, jurors, witnesses, 2763

MAGAZINES.

Established in towns for storage of gunpowder, 1119
In Mobile, to be on an island in the river, 1120
Penalty for keeping large stock of powder in towns, 1118

MAIM OR MAYHEM.

Definition of, how punished, 3105
Assault with intent to, how punished, 3106

MALICIOUS MISCHIEF.

Killing or disabling animals, or injuring other property, 3114
To houses, &c., destroying fences, cutting loose boats, 3115–16
Fines for, go to injured party; malicious trespass on land, 3117–18
Removing monuments, line trees, milestones, &c., injuring toll bridges, 3119–20–1
To mill dams, &c., canals, 3123–4
Poisoning springs, punished as felony, 3125

MALICIOUS PROSECUTIONS.

Action for damages for, barred in one year, 2481

MANDAMUS.

Issued by circuit court to inferior tribunals, 629
Writs of, issuable by supreme court, 568

MANSLAUGHTER.

By slave of white person; by slave of free negro or slave, 3312–13
Two degrees of, definition and how punished, 3084–8

MAN STEALING.

See "Kidnapping," "Slave Stealing."

MANUFACTURING, MINING AND QUARRYING CORPORATIONS, MODE OF ESTABLISHING.

Preliminary to formation of corporation, 1473–4
On filing and recording declaration, corporation complete, 1475
Shares of, transferable on the books, each share a vote, 1476
Amount of capital stock, duration of charter of, 1477
Liability of share-holders on dissolution, 1478
Corporation proved by a copy of the declaration, 1479
Fees of officers for recording declarations, 1480

MARINERS.

See "Ships and Seamen," "Free Colored Mariners."

MARKS AND BRANDS.

Each owner of cattle to have a mark or brand, 1094
To be recorded; brand or mark recorded only to one person, 1095–6
Indians or slaves not to mark or brand, 1097
Fee of judge of probate for recording, 1098

MARRIAGE.

See "Husband and Wife."
Incestuous forbid; of illegitimate relations incestuous, 1942–3
Marriage of male under seventeen years, or female under fourteen years of age void, 1944
Annulled by conviction of incest; children born before legitimate, 1945
Judges, justices and licensed ministers may solemnize, 1946
By pastor of any religious society; register of to be kept, 1947
Quakers and Menonites married according to their forms, 1948
Not to be solemnized without license, 1949
Consent of parents, &c., when required; bond in all cases, 1950–1
Registry of licenses kept by judge of probate, 1951
Certificates of marriage registered, 1952
Penalty for improper issuance of license by the judge, 1953
For failure to record license, consent of parents, or certificate, 1954
Penalty for marrying couple without license, 1955
Penalty for marrying parties under age, or a white to a negro, 1956
Certificates of marriage returned to judge of probate, 1957
Fee for marrying; for issuing license, 1958–9
Judge of probate to report offenders to solicitor, 1960
Marriage of the parents legitimates the offspring, 2008
Compelling woman by force to marry, how punished, 3093

MARRIED WOMEN.

Separate estates of; see "Husband and Wife," "Dower," "Conveyances," "Descents and Distributions," "Limitation of Actions."
Conveyances of certain property by, void unless joined in by husband, and attested or acknowledged, 1282
Marriage settlements to be recorded; again recorded on removal, 1293

MARSHAL OF UNITED STATES.

See "Jails."
Of supreme court, appointed by the court, &c., 575–6–7

MASTER AND SLAVE.

See "Slaves."
African slavery recognized; rights of master; duties, 2042–3
Slave emancipated by application to judge of probate; notice given, 2044–5
Cause to be shown and slave then emancipated, 2046
Slave to leave in six months, penalty for failure, 2047
Creditor's right not to be impaired; fee to judge of probate, 2048
Slave claiming freedom to petition circuit court, 2049
Owner summoned to answer; publication if not found, 2050
Proceedings conducted as in other cases, 2051
Owner to give bond if possession of slave retained, 2052
Petitioner, if at large, to give security for costs and to answer judgment, 2053

Judgment against sureties when petition refused, 2054
Petitioner declared free if judgment is in his favor, 2055
Slaves of tender years not separated from their mother by sale under execution, 2056
Sales of under mortgages, &c., to be by families, 2057
Slaves unlawfully imported taken possession of by the state, 2058
Agent to give bond; slaves hired pending the proceedings, 2059–60
Proceedings against by libel; slaves sold if sustained, 2061–2
Claim filed and tried as in other cases: trial right of property, 2063

MEASURES.

See "Weights and Measures."

MECHANICS' LIEN.

On buildings, for labor and material; its extent, 2673
Conclusive as to interest of party to the contract, 2674
Enforced in chancery, or by execution after judgment, 2675
Barred if not asserted in ninety days, 2676

MEDICAL BOARDS.

See "Physicians."

MERCHANTS.

See "Bills of Exchange and Promissory Notes," "Accounts, Limitation of," "Tax on Licenses."

MEMBERS OF THE LEGISLATURE.

See "Elections of," "General Assembly."
Their oath, pay and mileage, 42–3
Pay in case of sickness; accounts of, how certified, 44–5

MILE POSTS AND SIGN BOARDS.

Overseers of roads to set up; to contract for putting up, 1159–62
Penalty for defacing or destroying, 1176

MILLS AND MILLERS.

See "Water-works and Dams."
To observe rotation in grinding; lawful toll one-eighth, 1110
Public mills defined; penalty for breach of duty, 1111–12

MILITIA.

(A Military Code was adopted at the session of 1851–2.)
Penalty for calling them out on election day, 364
Laws relating to not repealed by the Code, 10

MINING.

Corporations to conduct, see "Manufacturing," &c.

MINORS.

See "Infants," "Guardians," "Limitation of Actions," "Executors," &c.

MISDEMEANORS.

Defined, 3072
Not provided for in Code, how punished, 3301
Not prosecuted after lapse of a year, 3374

MOB.

Pulling down or injuring buildings, how punished, 3079

MOBILE.

See "Port and Harbor of," "Ships and Seamen," "Pilots," "Oysters," "Engineers and Steamboats," "Free Colored Mariners," "Factors," "Inspection Laws," "Cotton," "City Court of Mobile," "Magazines."
Penalty for charging for storage of cotton in, unless sheltered, 933

MONEY.

See "Gaming," "Banks and Banking," "Change Bills," "Free Banking."
Taxes on loaned at interest, at usury, hoarded, 391
Issuing bills to circulate as, without authority; penalty, 3268
Signing such bills, 3269–70

MORTGAGES AND DEEDS OF TRUST.

See "Dower," "Conveyances," "Frauds and Perjuries."
Acknowledgment of for record, before whom made; how taken in other countries, 1276–7
Form of acknowledgment; form of probate, 1279–80
Tax on mortgaged property, to whom assessed, 410
Of personal property, to be recorded, when and where, 1283
Of personal property brought to the state, 1284
Of real estate to secure debt created at date, recorded in three months, 1287
Other mortgages have a lien only from time of record, 1288
Defeasances of deeds to secure debts, recorded, 1289
All conveyances of personal property to secure debts recorded, 1291–2
Powers of sale in, pass with the debt, 1319
On payment, satisfaction entered of record, 1343
Penalty for refusal to enter satisfaction, 1344

MOTIONS AGAINST OFFICERS AND ATTORNEYS.

See "Summary Judgments."

MOTIONS BY SURETIES AGAINST EACH OTHER OR PRINCIPAL DEBTOR.

See "Surety."

MULATTOES.

Defined, 1
Not competent witnesses for or against whites, 2276

MURDER.

Two degrees of; definition of each; how punished, 3080–1
Verdict of jury to specify in what degree guilty, 3082
Killing with concealed weapons murder, 3087
Killing in a duel murder, 3088
Assault with intent to commit, 3106
Assault on white man by slave with intent to commit, 3312

NAMES.
See "Abatement," "Legitimation and Adoption of Children."
Court of probate may change, how, 670
Mistake of corrected after judgment, 2404

NATURALIZATION.
Affidavit of, entitles party to vote without certificate, 216

NAVIGABLE STREAMS.
See "Roads, Bridges and Ferries."
No tax or toll taken for passage on, 389
On public highways, 1205

NE EXEAT.
See "Chancery."

NEGRO.
See "Slaves," "Mulattoes," "Master and Slave," "Free Negroes," "Free Colored Mariners,"
Definition of the word, 2
Not competent as witness for or against a white man, 2276

NEGOTIABLE PAPER.
See "Bills of Exchange and Promissory Notes."

NEW TRIALS.
See "Appeals."
Grantable within two years, on finding receipt, release, &c., 2407
Granted in four months, if defence prevented by fraud, 2408
Order for obtained by petition, on oath to circuit judge, 2409
Supersedeas ordered on grant of, bond required, 2410-11
Supersedeas dismissed if petition denied on oath, 2412
Refunding bond required before issuance of execution, 2413
Damages for delay when petition finally denied, 2414
Bonds taken have the force of judgments, 2415
Validity of executions examined into in term time, 2416
Questions of fact tried by a jury, 2417
Only two granted same party in a suit, 2267

NON COMPOS MENTIS.
See "Guardians," "Lunatics."
Term defined, 1

NON-RESIDENTS.
See "Attachments," "Chancery."
Taxation of lands of, not higher than of residents, 387

NON-SUITS.
Plaintiff non-suited suing for less than court's jurisdiction, 2265
Two equal to verdict for defendant; when to be taken, 2266
Plaintiff forced to, does not waive exceptions, 2357

NOTARIES PUBLIC.
Appointed by governor for three years, 854
Removal from county vacates the office, 855
Gives bond; administers oath in certain cases, 856-7
Takes acknowledgment or probate of commercial papers, 857
Demands and protests commercial paper, 857
Gives notice to protested parties, 857
Keeps a seal and register, and certifies copies, 858-9
Register delivered judge of probate on his death, 860
Certified copies, how then made, 861-2
Fees of notaries, 863
To collect and pay over tax on official seal, 408

NOTES, BILLS AND BONDS.
See "Bills of Exchange and Promissory Notes," "Banks," &c., "Change Bills," "Forgery," "Pleadings."
Payable at a bank or banking house, negotiable paper, 1525
Maker of notes over fifty dollars to be sued to first term to charge indorser, 1543
Of less than fifty dollars sued in thirty days, 1544
Excuses for not suing; suit waived by written consent, 1545-6
Irregular indorsements require suit, 1547
Assignor pays costs of suit against the maker, 1548
Penalty for issuing to circulate as money, 935
Assignable by indorsement, subject to set-off, 1534

NOTICE.
See "Elections," "Conveyances," "Attorneys."
Of protest of bill or note, when sent, 1542
Record of deed without probate or acknowledgment is, 1274

NUISANCES.
See "Hospitals."

NUNCAPATIVE WILLS.
See "Wills."

OATH.
Includes affirmation, 1
Testimony in court to be given under, 2301

OATH OF OFFICE.
See title of each officer for his oath.
Under Code, what, and how administered, 110-11
When filed; indorsed with date of filing, 112-13-14-15
Oaths of deputies; penalty for failure to file, 116

OBSTRUCTION.
See "Roads," "Port and Harbor of Mobile."
Malicious obstruction of railroad; negligent obstruction, 3194-5

OFFENCES.
See "Criminal Prosecutions."
Crime or public offence defined, 3069-70
Felony defined; misdemeanor defined, 3071-2
Petty offences defined, 3073
Felonies and misdemeanors indictable offences, 3074

OFFENCES AGAINST THE PUBLIC PEACE.
See head notes, page 559.

OFFENCES AGAINST THE PERSON.
See head notes, page 561.

OFFENCES AGAINST PUBLIC AND PRIVATE PROPERTY.
See head notes, page 564.
OFFENCES AGAINST PUBLIC JUSTICE.
See head notes, page 577.
OFFENCES AGAINST PUBLIC MORALITY AND DECENCY.
See head notes, page 582.
OFFENCES, MISCELLANEOUS.
See head notes, page 586.
OFFENCES AGAINST SLAVES.
See head notes, page 591.
OFFENCES, PETTY.
See head notes, page 592.
OFFENCES BY SLAVES OR FREE COLORED PERSONS, AND PROCEEDINGS IN RELATION TO.
See head notes, page 593.
OFFICES.
Usurpation of, see "Corporations," "Oath of Office," "Bonds," "Salary," "Elections," "Resignation," "Vacation of Office."
Certain persons ineligible fo office, 105
Penalty for taking when ineligible, 106
OFFICERS.
See "Summary Judgments," "Elections of," "General Assembly," "Offices."
Must reside in the state, 108
Certain officers commissioned, 109
On retiring, to deliver papers, &c., to successor, 154-5-6
Proceedings to compel delivery, 156-60
Joint authority in, executed by majority, 3
OPINIONS.
See "Supreme Court," "Attorney General."
ORPHANS.
See "Courts of Probate," "Guardians," "Poor."
OVERSEERS.
Of roads, see "Roads."
Of slaves, see "Slaves."
Of the poor, see "Poor."
OYSTERS.
Taking with certain implements forbid, 1121
Penalty of ten dollars and forfeiture of vessel for, 1122
Authority of justices to enforce the law, 1123-4
Appeal allowed, and bond stays sale, 1125-6
Proceeds of sale paid county treasurer, 1127
Sheriff may call out a force to suppress resistance, 1128
PARDONS, REPRIEVES, AND COMMUTATIONS.
Governor has power to grant after conviction, except for treason and impeachment; and to remit fines and forfeitures, 3699
Entry of reasons to be made; capital punishment, when commuted, 3700-1
Ignominious punishment commuted; certified to clerk, 3702-3
Imprisonment, when remitted, 3704-5
Sentence postponed to apply for pardon; statement of evidence by judge, 3706
PAPERS.
See "Actions," "Evidence," "General Assembly," "Officers."
PARTIAL PAYMENT.
Applied to interest due, 1522
PARTIES TO SUITS IN CHANCERY.
See "Chancery."
PARTIES TO ACTIONS AT COMMON LAW.
Examination of, see "Evidence."
Actions on contracts brought in the name of real party, 2129
Beneficiary the sole party to the record, 2130
Husband and wife; when joined as plaintiffs or defendants, 2131
Infants sue by next friend and defend by guardian, 2132
An unmarried woman may sue for her own seduction, 2133
Suits for seduction brought by either parent, 2134
The father, or in case of his absence, the mother, may sue for injury to child, 2135
The wife may sue in husband's name, on his desertion, 2136
The state sues without bond or affidavit, &c., 2137
Citizens or domestic corporations may sue the state, 2138
Solicitor counsel for the state; other counsel, if necessary, 2139
Commissioner issues his warrant after six months to pay judgment, 2140
County not to be sued till court of county commissioners rejects the claim, 2141
Partners sued by service on one, or sued alone, 2142
Joint promise in writing sued against either party, 2143
Defendant may deposit money in court, and suggest another defendant, 2144
Notice to claimant, if a non-resident, 2145
Actions not to abate by death, but revived in eighteen months, 2146
Death of nominal plaintiff not to abate suit, 2147
Judgment by default, after citation to representative, 2148
Discontinuance as to parties not served, or alias, 2149
Marriage of a woman does not abate suit, 2150
Suits may be brought on lost notes and bills of exchange, bank notes excepted, 2151
Execution suspended till bond given, 2152
Service on one representative sufficient, 2153
Person injured sues on an official bond, 2154
Penalty imposed by law recoverable by any citizen, 2155
Defendants who succeed, recover costs, 2156
Personal actions survive, except for injury to the person, &c., 2157
Actions for recovery of, or for trespass to, real property, survive to heirs or representative, 2158
When performance of contract prevented by death, part recovered, 2159

Plaintiff may prove claim of three hundred dollars by his own oath, 2313
Defendant may deny it on oath, 2313

PARTITION FENCES.

See "Fences."

PARTITION OF LANDS.

Courts of probate have jurisdiction of, 670
Judge of probate can divide among parties, if of full age, 2677
Petition to describe the land, the owners, and their interest, 2678
Judge then makes publication, 2679
Commissioners appointed, 2680
Sworn, and then survey and divide into shares, 2681
Publication of time and place of dividing, 2682
Division made by lot, and result returned, 2683
Papers filed and registered as conveyances, 2684
Division vests title; set aside for fraud in chancery, 2685
Lien against one party attaches to his share, 2686
New commissioners appointed when necessary, 2687
Fees of judge of probate and commissioners, 2688
Execution against each party for a share of costs, 2689
No division made if adverse title asserted, 2690
The power conferred not to prevent other modes of obtaining partition, 2691

PARTNERS AND PARTNERSHIPS.

See "Parties to Suits."

Property of, to whom assessed for taxes, 410
Joint or separate property liable to attachment, 2518
Proof of by plaintiffs dispensed with, unless denied by sworn plea, 2281
Sued by service on one, or each separately, 2142

PARTNERSHIPS, LIMITED.

Authorized, for certain purposes; liability of the partners, 1493-4
General partner transacts business of; proceedings to form, 1495-6
Certificate acknowledged and recorded in each county, of business, 1497-8
Oath of general partner to payment of capital by special partner, 1499
Partnership not complete till certificate and affidavit filed, 1500
All liable as partners, if false statement made, 1501
Terms of published six weeks; penalty of neglect, 1502
Printer's affidavit proves it; renewals, how made, 1503-4
Alteration to be recorded, or partnership becomes general, 1505
Name of special partner not used; general partner defends suits, &c., 1506-7
Special partner cannot withdraw capital, but may interest, &c., 1508
Liable for sums received as profits, if capital be reduced, 1509
Special partner may examine, &c., but cannot manage the concern, 1510
Partners liable to account to each other; damages for frauds, 1511-12
No preference given creditors by assignment, 1513
Sales, &c., by either partner to give preference, void as to creditors, 1514
Violation of the rule makes the partnership general, 1515
Dissolution of, when complete; fees of judge of probate, 1516-17

PASS.

See "Slaves," "Free Negroes."

PATENTS.

To issue on grants by the state on payment of purchase money, 1350
Copies of, evidence if recorded, 1353
Patents evidence without proof, 2297

PATROLS.

Who liable to duty of, 983
Lists of those liable made by oldest justice; divided, and leaders appointed, 984
Term of service of detachment fixed, 984-5
Lists, with term of service, handed constable, 986
Constable to notify leaders; if sick or absent, another appointed, 987
When terms have expired, lists renewed, 988
Leader to call out his men; to patrol once a week, 989-90
Substitute may be furnished; authority; when to punish slaves, 991-2-3
Search for runaways, and take them before justice, 994
Slaves may be carried to owner or to justice, 995
If only one justice in precinct, he acts, 996
Fine of defaulting patrol; leader to report to justice, 997-8
Penalty for failure to report defaulters, 999
Justice to report leader's failure to solicitor, 1000
Leader refusing to act, fined, 1001
Penalty for neglect of duty by justice or constable, 1002
Fine paid over by them to county; penalty, 1003
Penalty for abuse of authority by patrol, 1004
Inhabitant of towns exempt from duty, 1254

PEACE.

Proceedings to keep; see "Criminal Prosecutions," &c.
Security to keep, what officers may require, 3339

PEDDLERS.

Tax on, 391

PENALTY.

When imposed by law, any citizen may sue for, 2155

PENAL BONDS.

Recovery upon limited to amount due, 2367
Assignment of breaches on, after judgment by default, 2231

PENAL CODE.
See "Offences," "Criminal Prosecutions,"

PENITENTIARY.
See "Imprisonment," "Criminal Prosecutions," "Felony," "Offences," "Convictions," "Convicts."
Sentence to disqualifies elector, 171

Lease of Penitentiary.
Governor to advertise for proposals for; contents of proposal, 3863-4
Contents of advertisement; selection of fit person made, 3865-6
Governor to select between equal bids; nothing paid to lessee, 3867-8
Pardoning power not impaired; bond for rent required, 3869-70
Also for discharge of duties; filed with comptroller, 3871-2
Additional bond, how required; eviction for refusal, 3873-4
On failure to give bond, forfeited, 3875
Inventory and appraisement before delivering to lessee, 3876
Lessee, the warden; duties as warden to the convicts, 3877-8
He is civilly liable for his agents; also for pay of inspectors, 3879-80
On death of lessee, a warden appointed by inspectors, 3881
They act under the inspectors; governor advertises for proposals, 3882-3
Proposals acted on as in the first instance; bond, &c., 3884-5
Inspectors' authority lasts until lessee qualifies, 3886
Warden appointed by governor if no lease can be made, 3887
Laws regulating warden's duty when so appointed. 3888-9
Expenses then paid by treasurer, 3890
Death of lessee terminates the lease, 3891
Lessee to repair; also to return property as received. 3892-3
Losses from accident, &c., excepted, 3893

Organization of the penitentiary.
Officers of; inspectors appointed by governor, 3894-5
Physician appointed by lessee, with consent of inspectors, 3896-7
Inspectors paid three dollars per diem at the end of the year, 3898-9
Guard under warden's control; arms supplied by state, 3900
Each officer sworn; form of the oath, 3901

Powers and duties of the officers.
Board of inspectors choose a president; his duties, 3902
It establishes rules; governor to revise them; warden furnished with a copy, 3903-4
An inspector to visit penitentiary weekly; board monthly, 3905
Office of inspector vacated by failure to attend meetings, 3906
They report neglect of duty to governor, 3907
Board makes an annual report to governor, 3908
Convicts removed in case of contagious disease, 3909
Governor to visit penitentiary annually; warden to reside there, 3910-11
Warden has the keeping of the penitentiary; his duty, 3912-13
Physician's duties; register of convicts' health. 3914-15
He must send the sick to the hospital; also the insane; 3916-17
Inspectors and officers exempt from road and jury duty, 3918
Register's returns, &c., on official papers, 3919

Removal of prisoners to penitentiary.
Convicts removed to by sheriff; fined for failure, 3920-1-2
Sheriff prosecuted for escape; guards summoned, 3923-4
Judge may order extra guards; sheriff may also, to prevent rescue, 3925-6
Persons refusing to act, fined; sheriff commands them, 3927-8
Privileged from arrest while on duty. 3929
Judge may allow deputy to act; pay of guards, &c., 3930-1
Pay allowed only to guards employed; same allowed deputy, 3932-3
Warden allowed same pay for bringing prisoner for new trial, 3934
Sheriff pays expenses; jailors to receive and keep them on the way, 3935-6
Punishment for attempt to escape; of sheriff permitting, 3937-8
Prisoners under commuted sentence received, 3939
Prisoners sentenced by United States received, 3940
Copy of sentence delivered warden in each case, 3941

Police of penitentiary and punishment of escapes.
Person of convict searched and description recorded, 3942
Warden takes charge of his money or effects, 3943
Convicts to be washed, &c.; clothes laid away until released, 3944-5
Kept at labor; at night in separate cells, 3946
To be dressed in uniform; each has a Sunday suit, 3947-8
Sanitary regulations as to habits of cleanliness, 3949
Turnkey in each ward; each convict to have a bible, 3950-1
Inspectors regulate their diet, &c., 3952
May work for themselves at leisure hours, 3953
Warden reads convict's letters, 3954
Spirituous liquors excluded; penalty, 3955-6
No conversation with convicts, but on business, 3957
Males and females kept apart, 3958
Warden may punish by solitary confinement, 3959
Fed on bread and water during such confinement, 3960
Other punishment ordered by inspectors, 3961

Warden to report the punishment to inspectors, 3962
Justice to make inquisition on death of convict, 3963
Sick convict, when released, supported till cured, 3964
Expenses paid and clothes furnished on release, 3965
Law of escapes, &c., read and explained by warden, 3966
Escape or attempt at, punished by additional term, 3967
Punishment of prisoner for assault; for conspiracy, 3968-9
Prisoner for life punished by solitary confinement. 3970
Punishment for aiding escape of prisoner, 3971
United States prisoners: liability for escapes, 3972
Confinement presumption of conviction, 3973
Governor notified of escape; punishment of officer permitting, 3974-5
Puiushment for releasing from solitary confinement, 3976
Warden's fee for removing prisoner for new trial, 3976-7
Service of process on, and testimony of convicts.
Process served by leaving a copy; claim proved, if no appearance, 3978
Commission to take convict's answer, 3979
Judge may order convict to be brought to give evidence for the state, 3980
Officers liable for escape as if in prison, 3981
In civil cases testimony taken by inspectors on interrogatory, 3982
Defendants in state case may take depositions of convicts, 3983
Testimony of incompetent witnesses to be excluded, 3984

PERJURY.

Defined; how punished; subornation of, 3197-8-9
What sufficient charge in indictment for, 3200
By slaves, how punished, 3315
Limitation of prosecution, within four years, 3372

PERPETUATION OF TESTIMONY.

See "Evidence."

PERPETUITY.

Settlement of lands in, forbid, 1308-9

PERSON.

Includes corporation, as used in the Code, 1

PERSON OF COLOR.

Defined, 2

PERSONAL PROPERTY.

See "Conveyances," "Taxes," "Wills," "Mortgages."
Where assessed for taxes, 410
When and how sold for taxes, 459
Brought to state, deed creating life estate, &c,, or incumbrance, to be recorded, 1284-5
Mortgages of, when recorded, 1283
Loans of in writing, or by will recorded; others void after three years, 1294-5
Parol gift of, invalid without possession, 1295
Distributed as real estate descends, 1581

PERSONATING ANOTHER.

To confess judgment, acknowledge deed, &c., felony, 2209
To receive property, or obtain credit, how punished, 3142

PETTY OFFENCES.

See "Offences."
Are public offences triable before justice, 3073

PHYSICIAN OF PENITENTIARY.

See "Penitentiary."

PHYSICIANS, SURGEONS, DENTISTS, AND DRUGGISTS.

Medical boards to continue in authority; to examine applicants, &c., 971-2
Licenses granted to those qualified, attested and recorded, 973-4
License proved by itself, or by certificate, &c., 975-6
Contracts of unlicensed physicians void, 977
Penalty for practicing dentistry without license, 976
Two days' notice to produce license required, 978
Negroes not to retail drugs; druggists to be licensed; penalty, 979-80
Fees of judge for certificates, 981
Thompsonian or botanical doctors not included, 982
Physicians' bills evidence, unless contradicted on oath, 2298

PILOTS AND PILOTAGE.

See "Port and Harbor of Mobile."

PLANK ROADS.

See "Roads."
Wantonly injuring or obstructing, how punished, 3196

PLANTERS' AND MERCHANTS' BANK.

Acts relating to continued in force, 10

PLEADING.

In civil actions at common law.

See "Attachments," "Actions, civil, trial of," see "Amendments," "Chancery."

General rules.

Time for filing when term only a week, 2260
Time when term is two weeks or more, 2258-9
If pleadings lost, copy may be filed, 2268
No objections to be sustained to form of pleas, &c., 2227
Struck out, on motion, for prolixity, 2228
In complaint for slander, colloquium omitted, 2229
Consideration of sealed instrument may be impeached, 2230
Assignment of breaches on penal bond, on judgment by default, 2231
Successive actions on same contract as causes arise, 2232
Profert dispensed with; notice to produce papers or bill of items, 2233

PLEADINGS.

The Complaint.

Issued with summons, and is in lieu of declaration; to be signed, &c., 2234

All actions on contracts may be joined, except where breaches are to be assigned, 2235

Forms of Complaints.

See page 551 to 555. 5564 7

Forms of pleas.

See page 566-7.

Special pleas required in all cases, except slander and trespass, 2237

If in abatement, sworn to, unless sustained by record, 2238

Character of plea, how determined, 2239

All demands, not merely in damages, may be set-off, 2240

Judgment for excess of set-off and costs; judgments set-off on motion, 2241-2

Surety sued alone may set-off debt due principal, 2243

No set-off to bills of exchange, &c., 2244

On plea of tender, money to be paid into court, 2245

Readiness to deliver bulky article sufficient, 2246

Date of filing to be indorsed on plea, 2247

Plea since last continuance no waiver of other plea, 2248

Replications and subsequent pleadings.

Joinder of issue is general replication, 2249

Special replication, what; double replication allowed, 2250-1

Subsequent pleadings governed by same rule, 2252

Demurrers.

Grounds of set out; none others considered, 2253

Amendments allowed after judgment on, without delay, 2254

Pleading over does not waive objections, 2255

Costs imposed for frivolous demurrer, 2256

Demurrer to evidence, see "Evidence."

PLEADINGS IN CRIMINAL CASES.

See "Indictment," "Criminal Prosecutions."

"Not guilty" entered for defendant standing mute, 3574

On plea of "guilty," witnesses examined and punishment fixed, 3575

When prisoner entitled to list of jurors and copy of indictment, 3576

Pleas in abatement, verified by oath, 3589

Pleas determined by their contents, 3590

Pleas to the organization of the grand jury; when, 3591

POISON.

Poisoning springs; felony, 3125

Penalty for selling without label, 3278

For selling to slaves or children, 3279

POOR.

Poor houses established and overseers appointed by court of county commissioners, 1211

Certain relations liable for the support of, 1212

Certificate of judge of probate evidence in suits against them, 1213

If county fails no costs taxed against it, 1214

Children of, bound apprentices by judge of probate, 1215

Duties of master to apprentice; penalty, 1216-17

Indentures cancelled by judge for good cause, 1218

Captain of vessels to indemnify counties against support of, 1219

On refusal to give bond imprisoned, 1219

Pauper lunatics provided for by overseer, 2763

POLITICAL DIVISIONS OF THE STATE.

See "Counties," "Senatorial Districts," "Congressional Districts."

POLICE AND SANITARY REGULATIONS.

See "Hospitals," "Physicians," "Patrols," "Roads," "Slaves."

POLLS AND POLL LISTS.

See "Elections."

POLLING A JURY.

See "Jury."

Either party may poll the jury, 3606

POSSESSION.

See "Real Actions," "Forcible Entry and Detainer."

Adverse for three years gives right to improvements, 2201-2

Writ of; see "Habere Facias," &c.

POSTHUMOUS CHILDREN.

Inherit as others, 1577

POWERS.

Of attorney to make conveyances; how acknowledged or proved for record, 1278

Of sale in a mortgage pass with the debt, 1320

Of revocation subjects estate to grantor's debts, 1321

General of disposition, subjects property to grantee's debts, 1325-6

If no trust or remainder over, such power is a fee, 1327

Definition of general power of disposition, 1328

Any may be reserved which can be granted, 1329

Conveyance under, good to extent of power, 1330

Executed as conveyances, 1331

If by will, then with the formalities of wills, 1332

To be executed by sufficient instrument, 1333

Revocable if coupled with a trust or interest, 1338

Lands devised to be sold by representative, 1339

Joint executed by survivor; among officers by majority, 1340-3

If beneficial, liable for debts; of attorney not included, 1341-2

Of appointment.

Among several persons; how exercised, 1334

In default of appointment, fund divided, 1335

If consent of another required, to be in writing, 1336

Grand-children take under as children, 1337

PRACTICE.
Rules of, in all the courts, established by supreme court, 568
See rules, &c., in appendix, page 709 to 720.
PRESENTMENT.
See "Jury, Grand."
PRECINCTS.
See "Roads," "Election Precincts," "Justices and Constables."
PREACHING AND PREACHERS.
See "Slaves," "Free Negroes," "Marriage."
PRECEDING.
Meaning of as used in the code, 5
PRESIDENT OF UNITED STATES.
See "Elections."
PRINCIPALS.
See "Accessories," "Sureties."
PRETENCES, FALSE.
Obtaining money, goods or credit under; felony, 3142
PRINTING, PUBLIC.
Acts prepared for press by secretary of state, 74
Divided into public and private or local, 75
Journals prepared with index, &c., 76
When delivered to printer; style of printing and paper, 77–8
Revenue laws printed separately, 79
Style of printing for general assembly, 80
For departments; parchments furnished, 81–2
Time for completing laws and journals, 83
Printing of general assembly; of departments, 84
Proposals advertised for, 85
Contents of proposals; when to be issued, 86–7
Above certain rates rejected, 88
Lowest bidder to be public printer, 89
His bond; payment for printing, when made 90–1–2–3
Secretary of state to contract if no proposal made, 94
Printing to be done at seat of government, 95
PRICES CURRENT.
Evidence of value at their date, 2299
PRISONERS.
See "Jails and Jailors," "Penitentiary," "Habeas Corpus," "Escapes," "Insolvent Debtors," "Bail," "Prison Bounds," "Sheriff," "Marshal of United States."
PRISON BOUNDS.
Defined; privilege, to whom due; bond required, 2734
Sheriff takes the bond, 2735
Prisoner for failure to pay fine, allowed benefit of, 2736
Judgment on the bond on motion, on breach of condition, 2737
Creditor not liable for support of prisoner in bounds, 2738
Prisoner under justice's process entitled to, 2739
Privilege of; lasts sixty days, 2740
PRIVILEGE.
Person discharged by to surrender on limitation of, 2434
PROBATE.
See "Judge of Probate," "Court of Probate."
Of conveyances.
See "Acknowledgement and Probate."
Of wills.
See "Wills."
PROCEEDINGS IN COURTS.
See "Actions," "Parties," "Pleadings," "Evidence," "Chancery," "Criminal Prosecutions," "Justices," "Appeals."
PROCESS.
See "Summons," "Criminal Prosecutions," "Executions," "Complaints."
Executed by "Sheriff," "Coroner," "Constables;" see each title.
All civil actions commenced by summons, 2160
Abuse of prevented by court after judgment, 2406
Resistance of service; how punished, 3218
Refusal of officers to execute criminal process; how punished, 3212
Refusal to aid in execution of when summoned, 3293–4
Common law or chancery used by chancery court, 3012
Officer justified under if regular on its face, 2284
Served by officer of either county on navigable stream, 24
PRO CONFESSO.
See "Chancery."
PROHIBITED DEGREES.
See "Incest."
PROMISES AND AGREEMENTS.
See "Frauds and Perjuries."
PROMISSORY NOTES.
See "Notes," "Bills of Exchange," &c.
PROPERTY.
See "Real Property," "Personal Property," "Trial of right of."
PROSECUTOR.
See "Indictments."
PROSECUTIONS.
See "Criminal Prosecutions."
PROTESTS.
See "Bills of Exchange," &c., "Notaries."
PROVISIONS.
See "Unwholesome Provisions."
PUBLIC BUILDINGS.
See "County Buildings."
Penalty for injuring or defacing, 3110
PUBLIC HIGHWAYS.
See "Roads," &c.
PUBLIC PEACE.
See "Criminal Prosecutions; proceedings to keep the peace."
PUBLIC ARMS.
See "Arms," page 161.
PUBLIC DOCUMENTS.
Attested by seal of state, &c., 56
How distributed among the people, 104

PUBLIC LAWS.
Repealed by code, 10
PUBLIC LANDS.
Contracts not to bid for, unlawful, or to bid off to resell, 1557–8
Penalty for violation of this law; party a competent witness, 1559–60
Improvements on may be sold, 1561

QUARANTINE.
See "Hospitals," page 231.
QUARTERMASTER GENERAL.
Has custody of public arms, 550
Reports condition, number, &c., to adjutant, 554
Quarter master of brigades report to him, 553
QUI TAM ACTIONS.
Barred by limitation of one year, 2481
QUO WARRANTO.
Writs of granted by supreme court, 568

RAIL ROADS.
See "Roads, Corporations to build," see "Corporations."
Penalty for carrying slave without written pass, 1010–11
Injuring or obstructing, and causing car to diverge; penalty for, 3109
Wantonly obstructing; negligently obstructing, 3193–4
RAFFLES.
Taxes on, 391
RAPE.
See "Offences against the person."
Punished by imprisonment for life, 3090
On white woman by slave; capitally punished, 3307
REAL ESTATE.
See "Lands," "Conveyances," "Descents," "Dower," "Wills," "Redemption," "Remainder," "Executions," "Rent."
Rate of taxation of, 394
Defined, 2
Where assessed when owner deceased, 410
Redemption of when sold for taxes, 468–71
Sale of for taxes, 460
When sold for taxes in incorporated towns, 1248–50
Who may convey or devise it, and how, 1265–6
REAL ACTIONS.
See "Limitation of Actions," "Dower," "Pleadings."
Seal not necessary to conveyance of land, 2198
On recovery possession retained; to gather crop by giving bond for rent, 2199
Bond on default has the force of a judgment, 2200
Suggestion of adverse possession of three years, 2201
Verdict if suggestion found true, 2202
No writ of possession for a year if improvements greater than the rents, 2203
If plaintiff fail to pay it for a year, defendant becomes entitled to the land by paying its value, 2204
Landlord made a defendant on motion if suit be against a tenant, 2205
Actions for use and occupation; when sustained, 2206
Damages for use, &c.; verdict, 2207
Rent accrued after judgment, recovered on motion, 2208
Form of ejectment altered, but law continued in force, 2209
Statement of plaintiff's claim and defendant's unlawful entry; all that is required, 2210
Defendant may demand abstract of plaintiff's title, 2211
Plea of not guilty as in actions of ejectment, 2212
Such plea admits possession, &c., 2213
Damages severally against the defendants, 2214
Tenant making no claim liable only for rent arrear, 2215
Defendant with bona fide claim liable only for a year's rent, 2216
Verdict to describe the premises recovered, 2217
Judgment by default admits title in plaintiff, but to recover costs possession to be proved, 2218
Two verdicts in favor of defendant, bar plaintiff's claim, 2219
REBELLION.
Conspiracy by slaves to rebel; trial of slaves for, 3306–21
Sentence of death for, executed instantly, 3330
Aiding slaves in rebellion a capital offence, 3076
Writing, &c, to incite slaves to; penitentiary, 3077
Inciting to, by circulating papers, &c., 3078
RECEIVERS.
See "Injunction, and appointment of receivers."
Appointed only by chancellor; notice of motion for in vacation, 2986
RECEIVING STOLEN GOODS.
How punished, 3177–8
Concealing stolen slave, 3179
RECORDS.
See "Conveyances;" see "Appeals," "Transcripts," "Costs."
Of courts not removed from county except in case of danger, 564
Minutes to be read in open court each day, &c., 565
Of the state.
See "Secretary of State."
Of notaries public.
See "Registers."
RECOGNIZANCES, OF WITNESSES.
See "Witnesses."
Of bail.
See "Bail."
To keep the peace.
See "Criminal Prosecutions; proceedings to keep the peace."
REDEMPTION, OF ESTRAYS.
See "Estrays," "Salvage."
Of real estate sold for taxes, 468–71

Of real estate sold for taxes by corporate town, 1252–3
Of real estate sold under mortgage, deed of trust, execution or decree.
Debtor allowed to redeem within two years, 2116
Possession to be delivered on demand 2117
Purchase money and ten per cent. to be tendered, 2118
Writ of unlawful detainer when purchaser refuses to allow it, 2119
Judgment creditors allowed to redeem, 2120
Purchaser may refuse to allow it by giving additional credit, 2121
One creditor may redeem from another, 2122
Also entitled to writ of unlawful detainer, 2123
Who deemed creditors; child may redeem; when, 2124–5
Value of improvements to be paid, 2126–7
Made by and from representatives, 2128

REFEREES.

See "Arbitration and Arbitrators."

REFERENCES TO REGISTER.

See "Chancery."

REGISTERS IN CHANCERY.

See "Chancery, Proceedings in."
One appointed for each district by chancellor for four years, 616
Gives bond; additional bond when required, 617–18–19
Office at the county site; duties and authority of, 620–1
Cannot grant or dissolve injunctions, or appoint receivers, 622
Special register; when appointed, 623
Cannot practice as attorney in the courts of chancery, 624
Cases removed from probate court tried before him, 1911
Fees of registers, 3044

REGISTERS OF LANDS SOLD BY UNITED STATES.

See "Taxation," 437–8–9

REGISTERS OF MARRIAGE.

See "Marriage."
Registers of notaries public, 858–59–60
Registers of births, deaths, marriages, &c., evidence, 2300

REGISTRATION OF CONVEYANCES.

See "Conveyances."

RE-HEARING.

See "Chancery," "New Trials."

RELEASES.

See "New Trials."
Receipts without sale operate as, 2282

RELEASE OF ERRORS.

Confession of judgment is, 3036
Injunction of judgment is, 2972

RELINQUISHMENT OF DOWER.

See "Dower."

RELIGION.

Churches exempt from taxation, 390
Disturbance of worship, how punished, 3257

RELIGIOUS SOCIETIES.

Provisions for incorporation of.
Preliminary steps to incorporation, 1257–8
Corporation complete on record of certificate, 1259
Powers of the corporation; suits against, how begun, 1262–3
Fees of judge of probate, 1264

REMAINDERS, REVERSIONS, AND CONDITIONAL LIMITATIONS.

Deeds and wills creating to be recorded, 1290–4
Contingent, of lands construed as executory devises, 1301
Not prejudiced by conveyance of particular estate, 1313

REMOVAL OF OFFICERS.

See title of each.
Notice of removal of officer by judgment to be given, 167
Of officer from county or circuit, vacates office, see "Officers."

RENT.

See "Attachments for Rent."
Landlord has lien on property for year's rent, 2460
If value of improvements greater than, no writ issues for a year, 2203
On giving bond for rent, possession retained to gather crop, 2199
Tenant making no claim, liable only for arrears, 2215
Defendant with bona fide claim liable for only one year's rent, 2216
Lien on crop for, enforced against purchaser with notice, 2535

REPLEVY OF PROPERTY UNDER ATTACHMENT OR EXECUTION.

See "Attachment," "Trial of Right of Property," "Attachments Against Steamboats."

REPLICATIONS.

See "Pleadings," "Chancery."

REPORTER OF SUPREME COURT.

Note, office abolished at session of 1851 and 1852, and judges required to report.
Appointed by the judges; they contract for printing, 585–6
His pay; if none employed, judges report, 587–8
Governor then contracts for printing, 589
Reports so published sold by secretary of state, 590
Publication paid for on certificate of the governor, 591
Profits invested for use of library, 592
Name of the judge trying the case reported, 593
Copies sent to the judges and solicitors, and to each state, 594

REPRESENTATIVES AND REPRESENTATION.

See "Congressional Districts," "Senatorial Districts."
In congress, elected by people of district, 173
When elected; special election of, 174–80
Seven elected for Alabama, 31
In the general assembly.
How apportioned among the counties, 26

Elected by the people; elections, when held, 173-4

REPRIEVES, COMMUTATIONS, &c.
See "Pardons."

RESTITUTION.
See "Detinue," "Distringas," "Real Actions."

RESIGNATION OF OFFICE.
See "Officers," "Vacating of Office."
By overseers and apportioners, see "Roads."
By governor, how made, 164
By other officers, how made, 165

RESIGNATION BY EXECUTORS AND ADMINISTRATORS.
See that title.

RESIDENCE.
Change of by officer, see "Vacating Office."
Defined as to qualification of electors, 172

RESTAURAT.
Tax on license of, 397

RETAILERS.
Free negroes not licensed to keep tavern, 1055
License to, only granted on certificate of character, 1056
Oath of applicant for license; retailer defined, 1057-8
Indictment for "selling liquor without license" good, 1059
In suits for liquors sold, license to be produced, 1060
Justices to bind over offenders, 1061
Selling liquor to slave, or trading with, felony, 3282
Selling liquor to minors and students, 3280-1

RETURNS.
Of executions, see "Executions."
Of attachments, see "Attachments."

RETURNS OF ELECTIONS.
See "Elections."
To be in writing, signed by returning officer, 250
In new counties, how made, 350
Fine for failure to make returns to speaker or secretary of state, 357
Notice of failure, by and to whom given, 358

RETURNING OFFICER.
See "Elections," "Congressional Districts," "Senatorial Districts."

REVENUE.
See "County Revenue."
Of the state, see "Comptroller," "Treasurer," "Taxation."
Punishment for conversion of to private use, 493
Accounts of officers of, audited by comptroller, 365
Laws relating to printed separately, 79

REVIEW.
See "Bills of."

REVIEWERS.
See "Roads."

REVIVAL.
Of suits, see "Abatements," "Judgments."

REVOCATION.
See "Powers," "Executors and Administrators," "Wills."

REVOLVERS.
Tax on, 391

REVOLUTIONARY SOLDIERS.
Certain property of exempt from tax, 391

RIGHT OF PROPERTY.
See "Trial of Right of Property."

RIVERS.
See "Navigable Streams."

ROADS.
See "Bridges," "Ferries," "Water-courses," "Navigable Streams."

Roads, public.
Court of county commissioners has general superintendance of, 1129
Grades of roads; established or changed only by order of court, 1130-1
Petition for change of; proceedings on petition, 1132-3
Viewers appointed and sworn; their return, 1134
Order for opening new road; damages to owner, 1135-6
Assessment of damages; how paid, 1137-8
Who liable to do duty on; who exempt, 1139-40
Not required to work on road six miles off, 1141
Inhabitants of towns exempt. 1240
Road precincts established and overseers and apportioners appointed, 1142
Their term of office; vacancies, how filled, 1143-4
Oath of apportioners; officers for new roads. 1145-6
Order of appointment furnished sheriff by judge, 1147
Statement of the overseers attached, with the names and grades of precinct and roads, 1148
Order of appointing overseers; what to show, 1149
Penlaty for neglect of duty by judge of probate, 1150
Service on overseers and apportioners of the notice, 1151
Service is valid from time of service, 1152
Excuse or resignation of overseer or apportioner, 1153
What the excuse must show, 1154
Excuse or resignation docketed and tried in circuit court, 1155
Duties of apportioners, 1156
Hands apportioned on nearest road, 1157
List of hands to be delivered by each person to apportioner, 1158
Duty of overseers of roads, 1159
Old apportionment valid, till new made, 1160
Hands in three miles called, if none has been made, 1161
Overseer contracts for mile posts and sign-boards, 1162
Overseers contract for timber; value of, how assessed, 1163
Tools also to be obtained; all in three miles to help open new road, 1164-5

Warning out hands, how done, 1166
Person serving the notice exempt from duty, 1167
If warned on two roads, to obey first warning, 1168
Penalty for not working when warned, 1169
Overseer may excuse defaulters; list returned to justice, 2170
List is evidence of the default; penalty for not prosecuting, 1171–2
No property of defaulters exempt from execution, 1173
Judge of probate to keep a road book, 1174
Authorities of town, indictable if streets out of order, 1175
Penalty for changing, injuring or obstructing, 1176
Gates on, when allowed; overseer permitting obstruction, fined, 1177–8
Failure to open new road or keep old one in repair, a misdemeanor, 1179
Racing or shooting on public road; penalty, 1180
Charge of neglect of duty, sufficient in indictments, 1181
Proof to sustain the charge, 1182
Penalty for neglect if none specially fixed, 1183
Order to establish a road is evidence of character, 1184
Compensation of apportioner prosecuting overseer, 1185
Pay of judge of probate and sheriff for road service, 1186

Roads, private.

How established; compensation of land owner, 1187–8

Corporations to build, how formed, their powers and liabilities.

Mode of forming corporations for construction of, 1424
Powers of when formed; certified articles prove the corporation, 1425–6
Court of county commissioners grant power to build in each county, 1427
Character of route and road stated in the application to, 1428
Notice of the application published in each county, 1429
Land owners may oppose the grant; public advantage considered and authority, if granted, recorded, 1430–1
Restrictions against removing dwellings and obstructing streams, 1432
Assessment of damages to owner of land; payment of, vests title, 1433–4
Costs against owner if no more assessed than are tendered, 1435–6–7
Appeals allowed to circuit court, 1438
Tried then anew; costs apportioned, 1439–40
Tried at first term on twenty days' notice, 1441
One jury may assess damages in several cases, 1442
Branch roads, election of officers, powers of, 1443–4
Failure to pay call, forfeits stock, 1445
Bridges erected by, and tolls allowed, 1446
Cities may give lots for the location of, 1447
Roads to be wide enough to permit carriages to pass, 1448
Tolls on, when charged; rates of, how fixed; certain persons exempt, 1449–50
Rail roads take toll when any part complete, 1451
Rates of toll published and not increased except at annual meeting, 1452
Penalty for passing around gates of, 1453
Directors manage the business; notice of election of, 1454
Voting by ballot, votes in proportion to shares; proxy, 1455
President elected by directors, 1456
Directors elected annually; to be shareholders, 1457–8
Share not voted on unless held for thirty days, 1458
Capital stock increased; notice of location of office, 1459–60
Process, how served on; list of shareholders, &c., kept, 1461–2
Transfers only valid on the books, transcripts of given, 1463–4
Penalty for refusing transcript; transcript evidence, 1465–6
Penalty for failure to keep stock list for inspection, 1467
Liability of share-holders; not discharged by dissolution, 1468
Directors personally liable if indebtedness over half the stock, 1469
Charter forfeited by failure to build road, &c., 1470
Right to repeal or modify, reserved, 1471
Fees of judge of probate, circuit clerk, and sheriff, 1472

ROBBERY.

Definition and punishment of, 3104

RUNAWAY SLAVES.

See "Slaves."

RUNNING OFF PROPERTY.

Punishment for running off under mortgage, &c., 3132
Indictment for; honest purchaser of, 3133

SAILORS.

See "Ships and Seamen."

SALARIES.

Of certain judges, not to be diminished during their term, Con. Ala., page 40.
Payable to officers quarterly, 169
Of governor, twenty-five hundred dollars, 55
Secretary of state, twelve hundred dollars and fees, 57–8
Comptroller, two thousand dollars and fees, 63–4
Treasurer, fifteen hundred dollars, (see note,) 70
Judges of supreme court, twenty-two hundred and fifty dollars, 574
Of judges of circuit courts, fifteen hundred dollars, 643
Attorney general, four hundred and twenty-five dollars and fees, 73

Solicitors. two hundred and fifty dollars and fees, 728
Deduction made from salary of judge failing to hold court, 638
Tax on salaries, 391

SALES.

Taxes on sales; when assessed, 391-410
Of real estate for taxes, see "Real estate."
Of real estate by executors, &c., see "Executors and Administrators."
Of slaves as runaways, 1027-8-9
Of slaves for taxes, 460
Of public lands, fraudulent combinations at, see "Public Lands,"
Sales by sheriff, see "Executions" and "Attachments,"
By constables, see "Justices," &c.
Of school lands, see "School Lands;" see also, "Partition."

SALT SPRINGS.

Governor may lease them out, 549

SALVAGE.

Property adrift may be taken up, 2075
Appraisement of the property; justice to keep copy, 2076-7
Notice, when by advertisement; contents, 2078-9
Of less than thirty dollars' value, how advertised, 2080
Restored to owner on claim and proof of title, 2081
Salvors to be paid; also charge on the goods, 2082
Fees of the justice; of appraisers, 2083-4
If no claim made, salvors entitled to retain the goods, 2085
Owner's remedy on refusal to restore it to him, 2086
Penalty for injury to or concealment of the goods, 2087
Representative of salvor acts after his death, 2088

SATISFACTION.

Entry of on payment of mortgage debt, 1343-4

SCHOOL FUNDS.

See "Township Schools," "University."
Defined, 373
Attorney general to collect notes for school lands, 374-5
Paid over when collected to state treasurer 376
Duty of attorney general in relation to, 377
Certificates of stock for, issued to the township. 378-9
Tax collector to pay the interest to trustees, 380

SCHOOL LANDS: TRUSTEES AND SURVEYS.

See "Township Schools."
Defined; townships incorporated, election of trustees, 501-2 3
Mode of conducting the election, &c., 504-5-6
Casting votes: returns of elections, 507-8
Vacancy in trustees' board, how filled, 510
On failure to elect, court of county commissioners appoints, 511
Who eligible; term of office; if township on county line, 512-13
Oath and bond of trustee, 514-15
Majority of board, or one may act; survey of the land, 516-17
Lands to be leased and timber reserved, 519-20
Made by auction, notes payable to township, 521-2
Duties of lessee, timber rights, 523-4
Penalty for trespass on; fines how disposed of, 525-6
Sales of made only by vote of majority of inhabitants, 527
Mode of ascertaining will of the majority, 528-9-30
If sale agreed on, survey made and minimum fixed, 532
Sale of, where and how conducted, 533-4-5-6-7
Certificate given purchaser; effect of, 538
On failure to pay, land reverts without legal proceedings, 539-40
Notes for purchase money, how disposed of, 541-2
Fines go to school fund; patents on payment of price, 543-4-5
Trustees conduct suits for township, 546

SCIENTIFIC INSTITUTIONS.

Property of, exempt from taxation, 390

SCIRE FACIAS.

See "Bail," "Witnesses," "Garnishees," "Jurors," "Forfeitures."
Judgment when no execution in a year, revived by, 2419
But ten years without execution is presumption of satisfaction, 2420
Not to revive judgments after twenty years, 2421
Execution without sci. fa. in favor of administrator de bonis non, 1926
Judgments against decedent revived only by suit, 1930

SEAL.

Of the state, kept by secretary of state, 56
Tax on, 407
Writings importing to be under, so held, 1315
Of judge of probate, tax on, 396
Of notaries, clerks of circuit court and commissioners. 408-9
Consideration of instrument under, how impeached, 2230
Lands may be conveyed without sealed instrument, 2198

SEAMEN.

See "Ships and Seamen."

SEARCHES AND SEARCH WARRANTS.

Search warrants defined; what goods issued to take, 3774-5
Affidavit in writing required, showing probable cause, 3776-7
If proof considered sufficient, warrant issued, 3778-9
Form of warrant; how executed and by whom, 3780-1

Doors may be broken, &c.; executed in day-light; exception, 3782–3
Executed and returned in ten days; receipt for property taken, 3784–5
Property seized; how disposed of, 3786
Return of officer, contents; contest of right, &c., 3787–8
Property, when returned owner; papers returned to court, 3789–90
Fees paid in advance; penalty for maliciously suing out, 3791–2
Prisoner under charge of felony; searched, 3793
When issued to seize books, &c., of retiring officer, 158
How disposed of when recovered, 159

SECRETARY OF STATE.

See "Amendments of the Constitution," "Elections," "Laws and Journals."
Elected by general assembly for two years; Con., page 37.
His office hours and duties, 55–6
Salary of twelve hundred dollars and fees, 57–8
Papers of general assembly kept in his office, 38
Enrolled bills deposited with him, 39
He prepares the laws and journals for publication, 74–5–6–7
Advertises for proposals for public printing, 85
Distributes acts and journals of the state, 96
Copies sent judges of probate for county officers, 97–8
Duties in elections of circuit judges, 247–8
Collects a tax on his official seal, 407
Sells and distributes the reports of the state, 594–5
Supplies standards of weights, &c., to the counties, 951–2

SECURITIES.

See "Sureties,"

SECURITY FOR COSTS.

See "Costs," "Appeals," "Elections, contest of."

SEDUCTION.

Suit for, barred in one year, 2481
Unmarried woman may sue for, 2133
Either parent may sue for seduction of a child, 2135

SEIZURE, WRITS OF.

See "Ne Exeat," "Detinue," "Attachment," "Admiralty."

SEIZIN.

Living of dispensed with, 1316
Transferred by statute to the use, 1306

SENATORIAL DISTRICTS.

Their number, &c., 27
Returning officers of, 28–237
County officers to make returns to them, 29

SENATE.

Impeachments triable before; sitting as a court; Con. Ala., page 41.

SENATORS IN GENERAL ASSEMBLY.

See "General Assembly."
Thirty-three elected, one-half biennially, for four years; Con. and amendments, page 49.
Elected by the people; election for, when held, 173–5
Special election for, when held, 180

SEQUESTRATION.

If attachment in chancery returned "not found," writ issues, 3011

SENTENCE.

See "Execution."

SERVICE OF PROCESS.

See "Process," "Arrest," &c.

SET-OFF.

See "Justices, Civil proceedings before."
All demands not sounding in damages, pleadable as, 2240
Defendant sustaining, has judgment for excess, 2241
Judgments in same courts set-off on motion, 2242
Surety sued alone, may set-off debt due principal, 2243
Not allowed on certain commercial paper, 2244
Assignments of notes, &c., subject to.
See "Notes," "Assignment," "Bills of Exchange and Promissory Notes."

SHELLY'S CASE.

Rule in abolished and new rule of construction established, 1304

SHERIFFS.

See "Executions," "Elections," "Slaves," "Free Negroes," "Arrest," "Bail," "Process," "Roads," &c., "Criminal Prosecutions," "Proceedings to keep the Peace," "Jails."
Duty in arrests, &c.
See "Criminal Prosecutions, Commencement of."
Summary proceedings for and against sheriffs.
See "Summary Judgments."
Are elected for each county by qualified electors, 173
Elected for three years; Con. Ala., page 38.
Orders special elections of justices and constables, 264
Penalty for failure to order them, 269
Bond to be given, approved by judge of probate, 686
If no judge, approved by circuit clerk, 687
Penalty for failure to execute process from court of probate, 681
Keeps his office at the court-house, 688
Has one or more deputies, 689
Attends the circuit and chancery courts, and executes process, 690
Keeps an execution book to enter executions and orders, 691
Receipts to be entered in same book, 692
Sale book also kept; the books open to inspection, 693–4
Misdemeanor to neglect to keep these books, 695
When office vacant or sheriff incompetent coroner acts, 696
Returns statement of money received for county. 782
Penalty for failure, 783

Has charge of court-house, 767
Compensation of for road duties, 1186
Is jailor of the county and appoints a deputy, 3839
Duty and powers in suppressing affrays, 3336
May order out the military, 3337
Those acting under or in aid of justified, 3338
Fees of in civil cases, 3047
Fees in criminal cases, 3992

SHIPS AND SEAMEN.

See "Engineers and Steam Boats," "Free Colored Mariners."
List of passengers, &c., rendered on arrival, 864
List sworn to and filed with city clerk, 865–6
Penalty for neglect to render list, 867
Deserters from ships captured; penalty for harboring, 868–9
Penalty for employing seamen without a discharge, 870–1
Captain bringing paupers to give indemnity to the county, 1219

SIGNATURE.

Includes mark, 1

SLANDER AND LIBEL.

Suits for, barred in one year, 2481
Impugning woman's chastity actionable, 2220
Retraction mitigates damages, 2221
No costs if verdict not greater than amount tendered, 2222
Receipt of money as compensation is a release, 2223
Language used construed as in common parlance, 2224
Truth of charges against public men a bar to, 2225
Truth of charges mitigates damages in other case. 2226

SLAVES.

See "Master and Slave."
See "Offences by Slaves," page 593; "Offences against Slaves," 591.

General law as to.

Tax on; Tax for fund for slaves executed, 391
Tax for license to sell; penalty for selling without, 399–400
Sale of for taxes; where and how made, 460
Not to hire their own time; licensed by town, 1005
Not to remain at any house without permission, 1006
Penalty for permitting unlawful assemblies of, 1007
Penalty for leaving home without a pass, 1008
Visiting without pass; punished by owner, 1009
Liability of steamboats, rail roads, &c., for taking without a pass, 1010–11
Not to carry arms; licensed by justice to do so, 1012–13
Not to keep a dog; riots, &c., by, how punished, 1014–15
May be apprehended by any one without a warrant, 1016
Fire-hunting by; penalty on master allowing, 1017–18
Not to own a horse; penalty for writing a pass by, 1019–20
Unlawful assembly of, defined, 1020
Dispersed, and slaves whipped; penalty for preaching, 1021–2
Runaways; pay for capturing, 1023
Gangs of, how taken; pay for taking, 1024–5
Name of runaway slave and owner stated in commitment, 1026
Advertised by sheriff for six months, 1027
Sold if not then claimed; terms; proceeds, how disposed of, 1028
Claim of, by owner; how proved, 1029
On making and filing proof judge orders delivery, 1030
Irregularity in sale of runaway; not to avoid it, 1031
Fees of officers, 1032
Unlawful importation of; proceedings to confiscate, 2058

Slave, criminal law relating to.

Persuading him to leave his master, 3128
Harboring, how punished; aiding to escape, 3126–7
Forging passes for; stealing, inveigling, &c., 3129–30
Concealing or carrying off when charged with felony, 3219
Tried for though slave be not tried, 3221
Selling liquor to or trading with by retailer, felony, 3281–2–3
Selling poisons to, 3279
Trading with, fine and imprisonment, 3285
Evidence under indictment for, 3286
Employing in drawing or selling liquor, 3287
Retailers, &c., to be arrested and bound over by justice, 3288
Slaves or free negroes not to sample cotton, 3289–90
Previous provisions of part four as to punishments, &c., do not apply to slaves, 3305
Other provisions do, except when inconsistent with other parts of the code on that subject, 3305

Offences against slaves.

Whipping slave to death murder in first degree, 3295
Causing death by whipping without design to kill, murder in second degree, 3296
Cruel punishment of; neglect to feed, clothe, &c., 3297
Indictments for last offence; character of, 3298
Jury of slaveholders to try the case, 3299
Assaults on slaves are misdemeanors, 3300

SOCIETIES FOR RELIGIOUS OR EDUCATIONAL PURPOSES.

See "Incorporation of Societies."

SODOMY.

See "Offences against Decency," &c.

SOLDIERS.

Of revolutionary war and war of 1812 exempt from taxes, 390
Disqualified from voting while in service, 171

SOLICITORS.

See "Attorneys," &c.

Elected by general assembly for four years, 721
Governor fills vacancies; removal from circuit vacates office, 722-3
Their duties are to appear for the state, and advise grand jury in relation to presentments, 724
Fined for absence from court; attends special terms, 725-6
If absent or disqualified another appointed by court, 727
Salary two hundred and fifty dollars per annum and fees, 728
To have notice of failure of officers to file bonds, &c., 128
Notice given to, of failure to pay over county funds, 782
Proceeds against non-specie paying banks, 938
Defaults of patrol leaders reported to, 1000
Notice to, of state debtor's application under the insolvent's law, 2743

SOVEREIGNTY OF THE STATE.
Its extent, &c.; how to be maintained, 19-20

SPECIFIC PERFORMANCE.
See "Detinue," "Conveyances," "Imperfect Titles."
On death after written contract to convey, representative compelled by court of probate to convey, 1345

SPECIAL ELECTIONS.
See "Elections."

SPEECH.
Freedom of secured; Con. Ala., page 30.

STANDARDS.
See "Weights and Measures."

STALLIONS AND JACKASSES.
If at large, taken before justice and advertised, 1092
If not claimed may be gelded, 1093

STATE.
Meaning of, applied to territory within United States, 6

STATE BONDS.
Acts relating to, not repealed, 10
Comptroller to keep an account of those issued, 365

STATE STOCK.
See "School Fund."
Certificates issued townships for amount due each, 378
Such certificates registered; six per cent. interest, 379
Assignable by indorsement or transfer on books, 942
Loss of certificate; new one, when issued, 943-4
Registered and account kept; when paid assignee, 945-6
Transfers since adoption of Code only covered, 947

STATE TREASURER.
See "Treasurer."

STATE PRINTER.
See "Public Printer."

STAVES.
See "Inspection Laws."

STAY OF EXECUTION.
See "Executions," "Appeals," "Justices of the Peace."

STATIONERY.
For general assembly, how provided; supreme court and departments provided by secretary of state, 56
For clerk of circuit court, by the county, 660
For judge of probate, by the county, 684
For county treasurer, by the county, 794

STATUTES.
Of the United States or either state proved by printed copy, 2293

STEALING.
See "Larceny."
See "Slaves."

STOCK.
See "State Stock," "Marks and Brands."
When assessed with taxes, 410
Deposit of for free banking.
See "Free Banking."

STORAGE.
See "Factors," "Warehouses."
Of cotton to be under shelter in Mobile; penalty. 933

STEAM BOATS.
See "Engineers and Steam Boats."
Not to transport slave without a written pass, 1011-12
Taxes on; when and how assessed and collected, 478
Proceedings against for labor and materials in admiralty.
See "Admiralty."
Remedy for collision by attachment.
See "Attachment."

STIPULATIONS, &c.
See "Admiralty."

STRAYS.
See "Estrays."

STREAMS.
See "Navigable Streams," "Watercourses."

SUBPŒNAS.
See "Evidence," "Witnesses," "Forcible Entry and Detainer."
Issued for either party when cause on trial docket, 2303
Commissioners to take depositions can issue, 2325
By justices for witnesses in his county or in ten miles, 2774
Issued by arbitrators, 2717
Served in vacation, by leaving copy at residence, 2305
In term time by actual service of copy, 2306
Issued for each term till cause disposed of, 2306
Not to issue if witness one hundred miles from court; exception, 2304

SUBORNATION OF PERJURY.
See "Perjury."

SUGAR.
Adulteration of, how punished, 3267

SUITS.
See "Actions at Law," "Chancery,"

"Summary Judgments," "Justices of the Peace."

SUMMARY JUDGMENTS.

General rules as to.

Judgments rendered summarily against certain officers and their sureties, on notice and motion, 2596
Judgment for injured party against those having notice, 2597
Entry on motion docket, notice to officers of court and sureties, 2598
Tried by court unless jury demanded; tried instantly, 2599
Motions for, in what court made, 2600

Against sheriffs, coroners, and other executive officers.

Judgment on three days' notice, 2601
Failure to return execution, twenty per cent.; failure to pay money, five per cent. a month, 2602
Failure to make money, full amount and ten per cent. damages, 2603
Same penalty for false return, 2604
Failure to give notice of collection, five per cent. a month, 2606
Jury to assess fine for failure to execute process, 2607
On three days' notice for defendant, for excess of sheriff's sales, 2608
For failure to return satisfaction, twenty-five per cent. damages, 2609
For failure to return collections after injunction, 2610
For clerk of supreme court against sheriff on three days' notice, 2611
For neglect to return executions from supreme court, 2612
Copy of execution and certificate of clerk evidence, 2613
Sheriff may acquit himself on oath, 2614

In favor of sheriff, &c., on three days' notice.

Against obligors on indemnifying bond; against deputies and their sureties, 2615

Against clerks of circuit and supreme courts.

Against circuit clerk on three days' notice, 2616
For failure to enter return of execution, 2617
For failure to pay over money, 2618
For failure to issue execution, twenty per cent., 2619
For failure to pay over money deposited in court, 2620
For failure to pay over county funds, five per cent. a month, 2621
For failure to return statement of fines, 2622
In favor of comptroller, on ten days' notice, 2623
For failure to make returns according to law, 2624
For failure to issue execution for forfeiture to state, 2625
For neglect to pay over fines received, ten per cent., 2626
Against clerk of supreme court, for failure to pay State tax on suits, 2627

Against judges of probate, tax collectors and assessors, notaries public, and commissioners of deeds.

Judgment in favor of comptroller on ten days' notice, 2628
Against judges of probate and commissioners for failure to return taxes, &c. 2629
For amount of return, for failure to pay it over, 2630
Against judge of probate, for failure to return abstract of assessment books, 2631
Against defaulting tax collectors for taxes, and twenty-five per cent. interest, 2632
Certificate of comptroller evidence, 2633
Against assessor, for failure to return assessment books for a fine, 2634

Against attorneys at law.

Summary judgments for money collected on notice and motion, 2635
Plaintiff to show his title, and fee of attorney fixed by the court, 2636
Attorney to have personal notice, 2637

Summary judgments before justices.

For fifty dollars or less, on motion and five days' notice, 2820
Against justice acting after removal, fine forty dollars, one-half to informer, 2821
For amount collected officially, and not paid over, 2822
Made before any justice of the county within six months, 2823
Against constables, fine of forty dollars for acting after removal, &c., 2824
For failure to make money on execution, judgment for the amount, and five per cent. damages, 2825
For failure to pay over money, five per cent. per month, and the amount received, 2826
For five or ten dollars, for failure to execute a summons, 2827
For failure to levy attachment, judgment for debt and interest, 2828
For false return, or failure to return process, five to twenty dollars, 2829
In their favor, on indemnifying bonds, when judgment is rendered against them, 2830
Motions made before any justice of the county, and judgment against the parties and sureties having notice, 2831
When the sum exceeds fifty dollars, motion to be made in the circuit court, 2832

SUMMARY REMEDIES OF SURETIES.

See "Sureties."

SUMMONS.

See "Actions," "Complaint," "Pleading."

Civil actions commenced by summons, 2160
Issued by clerk, and accompanied by complaint, 2161
Form of summons; branch summons if defendants in different counties, 2162–3
Suits against freeholder in county of his residence, except for real property or trespass thereto, 2164

Issue execution and return of.
Served by leaving copy of, and complaint, 2165
To be served three days before return term; if served twenty days before, returned in five days, 2166
Returnable to second term, if issued only three days before, 2167
First day of term return day, 2168
Served on corporations by copy to president, 2169
If president unknown, on any white agent, 2170
When executed by coroner; to the state by copy to governor, 2171–2
Served on resident defendant in adjoining county, 2173
On county, by copy to judge of probate, 2174

SUNDAY.

Contracts made on, void, 1571
Compelling slave to labor on; how punished, 3302
Shooting, hunting, keeping open store, &c., 3303
Justice has cognizance of such offences, 3304

SUPERSEDEAS.

See "Appeals in Civil Cases."
Writs of granted by circuit judges, 629
Appeal by state operates as, without bond, 3017
Appeals do not supersede execution without bond, 3019
Amount of appeal bond, 3020
Amount of in trial of right of property, 3023
Bond for hire of slaves before supersedeas, after judgment in detinue, 3025

SUPREME COURT.

See Courts, page 164.
See "Clerk of," "Reporter," "Marshal."
Five judges elected by general assembly, (note,) 566
Majority hold court, chief justice appointed by, 567
Original and appellate jurisdiction of, 568
Authority of judges; terms of court, 569–70
Adjournment if judges absent for six days, 571
Provisions when judges are disqualified, 572–3
Salary of judges, two thousand two hundred and fifty dollars per annum, 574
Court appoints a clerk and marshal, 575-6-7-8

SURRENDER.

See "Bail," "Insolvent Debtors."

SURETIES.

Right of contribution among, on additional bond of officer, 143
Application of for discharge from official bond, 144
Rendered competent witnesses by indemnity, 2286
May require levy on principal's property; suretyship, how shown, 2448
When sued alone, may set-off debt due principal, 2243
On affirmance or appeal from justice, judgment against, 2372

Summary remedies of, on replevin bonds.
May demand indemnity, and on affidavit have writ of seizure, 2638–9–40
Indemnifying bond filed with original bond, 2641
Perishable property sold by sheriff on seizure, 2642

Against their principals.
On three days' notice when he has paid the principal's debt, 2644
When sued alone, on bank debts, 2644
Against each other, 2645
Not to confess judgment if offered indemnity, 2646
May require suit against his principal, 2647
Bonds with conditions and guardians, official, and executors' bonds excepted, 2648
Executors and administrators of surety entitled to his remedies, 2649
Motions for such judgments, when made, &c., 2650
Suits against on executors', guardians', and official bonds, barred in six years, 2477
On foreign replevin, or appeal bonds, in four years, 2479

TAVERN KEEPERS AND RETAILERS.

See "Retailers."
Taxes on licenses of, 397
Penalty for acting without license, 399

TAXATION.

See "Comptroller," "Treasurer."
System of, and persons and property exempt from.
Lands taxed according to value, 386
No discrimination against non-residents, 387
Lands of United States and navigable streams exempt from, 388–9
List of persons and property exempt from, 390

Rates and rules of assessment.
Rate of taxes on different subjects of taxation, 391
Accounts of taxable sales and incomes to be kept, 392
Tax year ends on 31st August, 393
Taxes and licenses assessed and collected by judge of probate.
On legacies, except to certain relations, 394
On lectures; for affixing his seal, 395–6
On licenses to retail, or keep tavern, and other licensed employments, 397
Granted for a year if not specified, 398
Penalty for acting without license, 399
List of licenses furnished grand jury, 402
Sale of slave without license void as to seller, 400
Licenses to be exhibited when required, 401
Taxes on suits collected by clerk of supreme court.
A tax fee collected on each suit for the state, 403–4
Statement made to comptroller, and payment to treasurer, 405
Defaults to be reported to attorney general, 406

Taxes collected by other officers.
Secretary of state and comptroller to collect tax on their seals, 407
Circuit clerks, notaries, and commissioners of deeds also, 408–9

TAXATION OF CORPORATIONS.
Rate of taxation of free banks, 1414
Real estate of, where assessed; personal, where, 411–12
President to return sworn lists; penalty for failure, 413–14
Agents of foreign corporations to make returns, 415
Fined for failure, and double tax imposed, 416–17

TAX ASSESSORS.
See "County Revenue."
Appointed by court of county commissioners; vacancy, how filled, 418
The one appointed last, holds till August, 1852, 419
Cannot be tax collector or county treasurer, 420–792
Bond required; duties of under Code, when to commence, 421–2
Duties of Assessor in relation to assessment of taxes.
Assesses all real and personal property between September and January, 423
Separate books of real and personal property, 424
Mode of entering assessment in the books, 425–6
Books made annually; notice of assessment in each precinct, 427–8
Persons liable to attend and give in sworn list; if infirm, may send, 429
Assessor calls at residence on failure; fee for calling, 430–1
Double tax assessed on refusal to return a list, 432
Taxes in arrear also assessed, 433
Comptroller to provide lists of lands sold by United States annually, 434–5–6
Arrangement of the registers so furnished, 437–8–9
Court of county commissioners sits to correct errors, 440–1
When so corrected, original books open to inspection, 442
Contents of the books; abstract of sent to comptroller, 443–4
Tax list then delivered collector, 445
Assessor not to make collections; exceptions, 446

TAX COLLECTOR.
See "Election," "County Revenue."
Elected by the people of the county, 173
Pays interest on township stock, 380–1
His term of office; vacancy, how filled, 447–8
One elected in 1851 holds office till March, 1854, and makes his collections, &c., under laws in force before adoption of Code, 449
His bond, by whom approved; when filed, 450
Lien of the bond on his property, 451
Duties of, when to commence under Code, 452
Duties of generally, 453
Notice of collection for each precinct, 454
When to return insolvents, and persons removed, 455
Return examined; not allowed to make another, 456–7
Taxes, how collected when party removes to other county, 458
Personal property, when seized and sold for taxes, 459
Sales of slaves for, when and where made, 460
Sale of real estate for taxes, how conducted, 461
Sold in separate parcels, 461
Bidder failing to pay, resale made; fine for failure, 461
Certificates of purchase given; assignable, 462–3
When bid in for state; certificate in such case, 464
Surplus of sale, how disposed of, 465
Statement of real estate sold made out; contents, 466
To be recorded; penalty for failure, 467
Redemption when sold for taxes, when and how made, 468
Redemption of lands bid in for the state, 469
Redemption money paid holder of certificate, 470
Penalty on judge of probate for neglect to pay over, 470
Not allowed after ten years in any case, 471
Certain officers not to bid; penalty, 472
Recitals of deed to purchaser; when made, 473
Sale not invalid for assessment to another, 474
Certificate of redemption given by judge on redemption, 475
Receipt of redemption money releases purchaser's title, 476
Penalty for selling willfully when taxes are paid, 477
To assess and collect on steam boats in Mobile and Montgomery, 478–9–80–1–2
Collections, when to be paid over, 486
Death of tax collector, 492
Ineligible as county treasurer, 792

TAXES, WHEN AND HOW PAID OVER BY COLLECTING OFFICER.
Sworn returns made by clerks of circuit courts, notaries and commissioners, 483
Taxes collected by judge of probate; paid tax collector, 484
Mobile tax collector to deposite monthly in bank, 485
Tax collectors to pay over to treasurer by first Monday in September, 486

TAXES, MISCELLANEOUS PROVISIONS.
State has a lien for; funds receivable in payment of, 487-8
Specie collected to be paid over by collector, 490
Proceedings on death of tax collector, 492

Penalty for malappropriation of state revenue, 493
Neglect of duty by officers a misdemeanor, 494
Summary proceedings against assessors, collectors, &c., 2628

TENANTS.

See "Rents."
Attornment of dispensed with, 1298
Landlord made party on motion, in suits against, 2205

TENANTS IN COMMON.

See "Partition of Lands."
Heirs take as tenants in common, 1588

TENANTS FOR LIFE.

See "Conveyances."
Cannot defeat ulterior estates, 1305
Can pass only their own estates by conveyance, 1317
Warranty does not affect the remainder, 1313

TENDER.

On plea of, money paid into court; if of bulky article, 2245-6

TEN PIN ALLEYS.

Tax on; penalty for keeping without license, 397-9

TERMS FOR YEARS.

Not to extend beyond twenty years, 1311

TESTIMONY.

See "Evidence," "Witnesses."

THOMPSONIAN DOCTORS.

May practice without license and charge fees, 982

THEATRE.

License of; tax on, 391-7

THREE PER CENT. FUND.

See "Treasurer."

TIMBER.

See "Roads," "Offences Against Property."
Penalty for cutting on school lands, 525-6

TITLES.

Imperfect, how perfected, see "Specific performance," see "Conveyances," 1345.

TOMB-STONE.

Injury to or defacing, punished by fine, 3242

TOLL BRIDGES.

See "Bridges, Ferries," &c.

TOWNS.

See "Hospitals," &c.
Acts incorporating not repealed, 10
May license slaves to hire themselves, 1005
Unlawful to store gunpowder in, 1118
May establish magazines, 1179-80
Mode of incorporating and powers of.
See head notes on page 269.

TOWNSHIPS.

See "School Lands" and "School Fund."
Certificates of stock issued to, 378
Interest on the stock paid by tax collector, 380
Rate of interest six per cent., 381
Trustees of receive the interest, 382
Are incorporated, 502
May hold certain real and personal property, 822
Trustees of, see "School Lands," "Township Schools."

TOWNSHIP SCHOOLS.

School funds are proceeds of the school lands, 821
Certain real and personal property may be held for, 822
Business of schools managed by trustees, 823
Majority of them transact business, 824
They establish school districts and schools, 825
Employ teachers of certain branches; other branches paid by the scholars taught, 825
Income apportioned among scholars, 825
Reports annually to judge of probate, 825
Penalty for failure to report, 826
Assistant teachers and books, when provided, 827
Incomes of two townships, when united, 828
Joint board of trustees; disposition of united fund, 829-30
Disposition of income when there is no school, 831
Time of actual attendance only, paid in such cases, 832
Abstracts of trustees' reports forwarded to governor, 833

TREASURER.

See "County Treasurer," "Escheats," "Comptroller," "Taxation," &c.
Gives bond; his office hours; accounts with successor, 65-6-7
Proceedings on his death or refusal to account, 68
Governor has superintendance of his office, 69
His salary, (note), 70
Additional bond, when required of, 134
Comptroller keeps an account with, 365
Duties of, in relation to state finances, 376
Receives and keeps money due the state on bonds, &c., 385

TREASON.

Defined; how punished, 3075

TRESPASS.

See "Real Actions."
Actions for land in six years, 2477

TRESPASSING ANIMALS.

See "Fences."

TRIAL IN CIVIL ACTIONS.

See "Actions," "Justices of the Peace," "Summary Judgments," "Sureties."

TRIAL IN CRIMINAL PROSECUTIONS.

See "Venue," "Jury," "Indictments," "Criminal Prosecutions."
Privileges secured prisoner by the constitution, page 30
Proceedings on plea of guilty; if prisoner stands mute, 3574-5
Accused to have copy of indictment and counsel assigned, in capital case, 3576
Number of jurors summoned in capital cases, 3577-8
Penalty for default; jury, how made up, 3579-80
Challenges allowed the prisoner, 3581

Number allowed the state, 3582
Causes of challenge; how proved, 3583-4
Other causes in felony, 3585-6
Court may excuse unfit person, 3587
Alien not entitled to jury of aliens, 3588
Pleas in abatement sworn to; determined by plea, 3589
Pleas to organization of grand jury, 3591
No objection taken to special grand jury, 3592
Court may direct separate or joint trial, 3593
When prisoner witness for other defendant, 3594
When prisoner may turn state's evidence, 3595
Slaves witnesses against free negroes, 3596
Proof of rape, &c., how made, 3597-8
Witness competent, though entitled to the fine, 3599
Conviction on evidence of accomplice, 3600
Defendant may be found guilty of minor offence, 3601
Juror knowing material fact must disclose it, 3602
Jury discharged in case of sickness, 3603
Adjournment of court discharges them, 3604
Verdict as to separate defendants, 3605
Jury polled by either party, 3606
Juror to be discharged, if sick, 3607

TRIAL OF RIGHT OF PROPERTY LEVIED ON.

On execution from probate court, 676-7-8-9
When levied on under attachment; see "Attachment," 2536
On claim, with affidavit and bond, property levied on restored, 2587
Bond, &c., returned, and issue made up to try the right, 2588
Burden of proof on plaintiff; damages for delay, 2589
Execution on bond, if property condemned, 2590
Proceedings when claim is made, on execution from other courts, 2591
Other property may be levied on; bond releases sheriff, 2593-4
Mortgagee may claim, but creditor may pay off the mortgage, 2595
Mortgagor or defendant in execution, not competent for claimant, 2291

Before justices.

On claim, bond, and affidavit, property restored, 2833
Jury summoned on return of execution, &c., 2834-5
Sworn to try the case impartially, 2836
Assessment of value of each article; damages for delay, 2837-8

TRUST ESTATES.

See "Conveyances," "Powers," "Husband and Wife."
The possession transferred by statute to the use, 1306
Trusts created by vesting trustee with legal estate, 1307
For accumulation, (except for infants), limited to ten years, 1310
Except implied trusts, created in land only by writing, 1320
Pay of money to trustee discharges debtor to, 1319
Void as to those without notice, 1321
Recording declaration of trust is notice, 1322
Do not descend to trustee's heirs, 1323

TRUSTEES; APPOINTMENT AND REMOVAL BY CIRCUIT COURT.

Causes of removal; proceedings to remove, 2725-6-7
Notice to non-residents or absent trustees, 2728-9
Application tried as other cases; bond, when required, 2730-1
New trustee appointed and bond given, 2732
Costs imposed at discretion of the court, 2733

Resignation, death, or removal by chancery, and appointment of successors.

Trustee may resign, on application to the register, 2991
Notice of the application to be published, 2992
To account and settle up before resignation, 2993
Such accounts not conclusive, except that he is protected as to payments made under them, 2994
Register appoints a new trustee, and takes bond, if necessary, 2995
On death, register appoints a successor, and takes bond, &c., 2996
Parties to have ten days' notice, or publication for thirty days, 2997
Guardians appointed for infants, &c., in such cases, 2998
Trustee removed by the court for violation of duty, 2999
New trustee appointed in such cases, 3000

TWO AND THREE PER CENT. FUNDS.

Acts relating to not repealed, 10
Comptroller keeps account of with the United States, 365
Treasurer to receive, and receipt for the balance, 370

TURNPIKES, &c.

See Roads.
Corporation owning, to keep in order; failure forfeits tolls, 1204

UNWHOLESOME PROVISIONS.

Penalty for sale of, or adulterating liquor, 1115
Initials of baker to be marked on bread, 1116
Penalty for using another's name, 1117

UNITED STATES.

Term includes territories, 7
Acts directing settlements with, not repealed, 10
Cession of lands to, how made, 21-2-3

UNIVERSITY OF ALABAMA.

Fund for support of; interest paid trustees, 383-4
Income of may be applied to buildings, 548
Trustees may sell the university lands, 547-8
University is a corporation; how endowed, 834
May receive grants, devises, &c.; misnomer not to avoid, 835-6

A trustee chosen by general assembly from each circuit, 837
Vacancies filled by the board; who eligible, 838-9
Oath of trustees; annual meetings of, 840-1
Governor president of board; special meetings, how called, 843-4
Quorum of board; authority of, 844-5
Treasurer appointed; bond required; deposits in bank, 846-7
Board reports to general assembly; faculty, what, 848-9
It enforces rules and confers degrees, 849
No religious test required of students or professors, 850
Sectarian tenets not to be taught; pay of trustees, 851-2
Supreme court judges, and president of university are trustees, 834

UNLAWFUL ASSEMBLIES.

See "Slaves" and "Free Negroes."
Of slaves, defined; how punished, 1015-20

UNLAWFUL DETAINER.

See "Forcible Entry, and Unlawful Detainer."

USURPATION OF OFFICE, &c.

See "Corporations, vacation of charter for usurpation of franchise, and proceedings to oust usurping officer."

USURY.

See "Interest."
Usurious interest not recoverable, and if paid, deducted from balance, 1523

VACANCY IN OFFICE.

Notice of given to governor, if filled by appointment, 162
Governor gives notice of to general assembly, if to be elected by it, 168

VACATING OFFICE.

See title of each officer; "Resignation,"
Sentence to penitentiary vacates, 107
Failure to file bond, when required, 125
Or to give additional bond, 138
Or to give new bond on requisition of sureties, 147
Resignation, when allowed; change of residence, death, or sentence of competent court vacates office, 161

VACATING CHARTERS.

See "Corporations."

VAGRANTS.

Defined; arrested on justice's warrant and committed, &c., 3794-5-6
Imprisoned twenty days for second offence, 3797
Commitment, to show period of imprisonment, 3798

VENIRE.

See "Jurors and Jury."

VENUE.

Change of in civil actions.

Changed once on motion and affidavit, 2359
Depositions of adverse party's witnesses in the county, taken, 2360
Subpœnas returnable to court to which removed, 2361
Changed to new county, if defendant resides in it, 2362
Clerk to transmit the papers; pay of messenger, 2363-4

Change of in criminal prosecutions.

Changed on affidavit of prisoner; contents of application, &c., 3608-9
How often and to what county removed; condition in misdemeanors, 3610-11
Mileage paid clerk; duty of clerk on order of, 3612-13
Duty as to subpœnas; defendant tried on copy of indictment, 3613-14-15
Witnesses, how subpœnaed; fines and forfeitures on, 3616-17
State witnesses, how paid, on acquittal, 3618

WAGERS.

See "Gaming and Wagering."

WARDS.

See "Guardian and Ward."

WARDEN OF PENITENTIARY.

See "Penitentiary."

WARRANTS ON TREASURY.

See "Comptroller," "Treasurer."

WARRANT OF ARREST.

See "Search Warrants," "Arrest," "Criminal Prosecutions, Commencement of," "Justices."

WARRANTY.

By tenant for life, not to prejudice dependent estates, 1313
Implied from the use in a deed of *grant, bargain,* or *sell,* 1314

WATCHES.

Taxes on, 391

WATER-COURSES.

See "Roads," &c., "Ferries."
Navigable streams are public highways, 1205
Court of county commissioners may contract to remove obstructions in, 1206
May divide into road precincts; hands apportioned on, 1207-8
Penalty for obstructing navigable streams, 1209
Liability for changing course of a stream, 1210

WATER-WORKS, DAMS, &c.

Owner of banks may erect; application, to whom made, 2089-91
Contents of application; ad quod damnum to sheriff, 2092-3-4
Notice to owner of opposite bank, to guardian if an infant, 2095-6
To non-residents, by publication, 2097
Manner of executing writ; charge of sheriff to jury, 2098
One acre also assessed for abutment of dam, &c., 2099
Verdict in writing, signed by majority and returned to judge, 2100
Parties interested summoned to show cause, 2101
Notice by personal service; if not found, by posting, 2102
Application rejected if dangerous to health or overflow of older mills, 2103

Failure to pay assessment for three months revokes the grant, 2104
Conditional fee vests on payment; revests on breach, 2105–6
Proceeding when canal necessary, 2107
Same proceedings when dam to be raised higher, 2108
Failure to perform conditions avoids the grant, 2109
Any one interested may contest application, 2110
Double damages for raising without authority, 2111
Fees of officers and jurors, 2112–13–14
Sheriff may act by deputy, 2115

WAYS.

See "Roads."

WEAPONS.

See "Arms."

WEIGHTS AND MEASURES.

Standard, fixed by Congress, 948
Contracts construed in reference to, 949
Secretary of state supplies each county, 950–1
Judge of probate to give notice of receipt of, 952
Also to try weights, &c., by, and seal them, 953
Fee of judge; penalty for selling by other standard, 955

WILLS.

General provisions.

All persons of full age and sound mind may devise lands, 1589
Any one who can hold, may take by devise, 1590
Lands devised to aliens go to next heir not an alien, 1591
Devise of "all my real estate," includes all held at the death, 1592
If devise not restricted, all of testator's estate passes, 1593
Estates "pur autre vie," chattels real on grantee's death, 1594
Infants of eighteen years may bequeath personal property, 1595
Property not devised, &c., descends as if no will, 1596
Marriage and birth of issue revokes the will, 1597
Marriage of a woman revokes the will, 1598
Posthumous children take as if no will were made, 1599
Manner of setting apart its share; death of before division, 1600–1
Devise not revoked by contract to convey; exception, 1602
Incumbrances, mortgages, &c., do not revoke, 1603
After acquired interest passes in devise of real estate, 1604
Legacy to a child vests in his children, 1605
Debtor made executor, not released thereby, 1606
Creditor competent witness, though property charged with debts, 1607
Devisee, &c., competent, but take only as heirs, 1608
Widow may dissent from within a year, claim dower, &c., 1609–10

Execution and probate of wills.

All wills to be written, signed, and attested by two witnesses, 1611
If witnesses competent at execution, will proved by them, 1612
Powers to be executed by, executed as other wills, 1332
Revocation only by cancellation or other will, 1613
Former will not revive by revocation of last; exception, 1614
Nuncupative wills valid only to bequeath five hundred dollars, 1615
Circumstances necessary to render them valid, 1616
Soldiers, seamen and marines make wills as heretofore, 1617
Nuncupative wills not probated till after fourteen days and citation, 1618
To be reduced to writing in six days or not proved, 1619
Wills; by whom offered for probate, 1620
Proved in probate court; in what county, 1621
Penalty for secreting will; proceedings to compel production of, 1622
Party complained of, discharged on affidavit, 1623
Manner of proving a will; witnesses to be produced, 1624–5
Commission to examine witnesses out of the state, 1626
Proof of execution, &c., recorded with the will, 1627
Certificate of probate and evidence, indorsed on original, 1628
When so proved and indorsed, receivable in evidence, 1629
When proved in other countries, admitted on certificate, 1630
Withdrawn after six months for probate elsewhere, 1631
Notice of application to withdraw to be given, 1632
Notice to non-residents by publication, 1633

Contest of validity of.

Probate, how and by whom contested; day for the trial set, 1634-5
Witnesses subpœnaed and jury summoned, 1636-7
Fine of defaulting jurors; bystanders called in, 1638-9
Continuance granted on proper showing, 1640
Depositions as in circuit court, 1641
Proceedings against defaulting witnesses, 1642
Rules of evidence as in common law court; change of venue also, 1643-4
Removal of papers to other county; contest then tried by circuit court, 1645-6
Judgment of circuit court certified to probate court, 1647
Probate allowed or refused by judgment of probate court, 1648

Cost of contest; execution for costs; of circuit court, 1649-50-51-2
How paid; when charged to the estate, 1653
May be contested in chancery within five years, 1654
Then tried by jury, or before chancellor, 1655
Time for contesting extended in favor of infants, &c. 1656

WITNESSES. 3412

See "Conveyances," "Wills," "Arbitrators."

In civil cases.

See "Evidence, depositions before justices," "Justices," "Forfeitures against."
Testify on oath or affirmation, in open court, 2301
Disqualified only by interest, or conviction of certain offences, 2302
Subpœnas for, issued when causes on trial docket, 2303
Not subpœnaed, more than a hundred miles from court; exception, 2304
In term time, executed personally; at others, by copy at residence, 2305
Issued by clerk from term to term, 2306
Penalty for default by witness; proceedings against, 2307-8
Imprisoned for refusal to testify; discharged on bond, 2309-10
Exempt from arrest under civil process during attendance, 2311-12
Excuse of defaulting witness; when made, 2312
Fees of witnesses, one and a half dollars and mileage, &c., 2379
Certificate of attendance issued to; attendance, when to be proved, 2380-1
Slave witness to receive charge from judge, 3318

In criminal cases.

See "Criminal Prosecutions, commencement of," "Forfeitures."
Clerk to issue subpœnas for defendant, 3560
Also for state's witnesses; solicitor may issue, 3561-2
Proceedings against defaulting witnesses, 3563
Deposition of witnesses, when taken by defendant, 3564
Subpœnas in indictable case, only issued once, 3565
Not to issue, unless defendant is in custody, or on bail, 3566
Served as in civil cases; pay as in civil cases, 3567-8
Fees paid by defendant, on conviction; if insolvent, by county, 3569
Witness exempt from arrest on civil process, 3571
Summoned for Wednesdays, when term only a week, 3572
If term more than a week, on Monday of second week, 3573

WORSHIP.

Disturbance of, punished by fine and imprisonment, 3257

WRIT.

See "Summons," "Process," "Execution."

YEAR.

Defined to be calendar year, 8
Fiscal year ends on the 30th September, 371

MONTGOMERY, ALABAMA,
July 1, 1852.

I, HENRY C. SEMPLE, having been appointed, by the Governor of Alabama, to make head notes to the Titles, Chapters and Articles of the Code of Alabama, with a full and complete index thereto, and to compare the printed copy with the original of such Code, as adopted by the General Assembly: Do hereby certify, that the printed copy of the Code contained in this book, has been compared with the original Code as adopted by the General Assembly.

HENRY C. SEMPLE.

ERRATA.

In section 1566 read "1562 *or* 1563," in place of "1563 *or* 1564."
In section 2237, insert a comma after the word *defamation.*
In section 2502, read, "and *are* now pending," instead of "and *all* now pending."
In section 2723, read "*arbitrators,*" instead of *authorities.*"
In number nine, forms of indictments, insert "*and*" before the word "*compel.*"